TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted]56

L. S. SKELTON, PLAINTIFF IN ERROR,

vs.

WILLIAM H. DILL.

MINNESOTA STATE LIBRARY

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED SEPTEMBER 17, 1912.

(23,357)

(23,357)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 346.

L. S. SKELTON, PLAINTIFF IN ERROR,

vs.

WILLIAM H. DILL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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1 In the Supreme Court of the United States, October Term, 1912.

Number —.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM H. DILL, Defendant in Error.

UNITED STATES OF AMERICA,
State of Oklahoma, ss:

The President of the United States to William H. Dill, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court at Washington City in the District of Columbia on the first day of October term 1912 pursuant to an Order allowing a Writ of Error to the Supreme Court of the State of Oklahoma in a certain action in said Court in which L. S. Skelton is Plaintiff in Error and William H. Dill is Defendant in Error, and show cause if any there be why the Decree and Judgment rendered against said Plaintiff in Error by the Supreme Court of said State as in said order allowing the said Writ of Error is set forth, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John B. Turner, Chief Justice of the Supreme Court of the State of Oklahoma, on this 2nd day of May, 1912.

JOHN B. TURNER,
Chief Justice Supreme Court of the State of Oklahoma.

Service of the above and foregoing Citation in Error is hereby accepted, this 9 day of May, 1912.

W. H. DILL,
Defendant in Error.

2 [Endorsed:] No. 1227. In the Supreme Court of the United States, —— Term, 1912. L. S. Skelton, plaintiff in error, vs. William H. Dill, defendant in error. Citation in Error. Stanford & Cochran, Attorneys for plaintiff in error. Filed May 10, 1912. W. H. L. Campbell, Clerk.

3 In the Supreme Court of the United States, October Term, 1912.

Number —.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM H. DILL, Defendant in Error.

Petition for Writ of Error.

To the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the Associate Justices of the said Court:

Now comes the Plaintiff in Error herein who was the Plaintiff in Error in the Supreme Court of the State of Oklahoma, and respectfully shows unto this Honorable Court that in the record and proceedings and in the rendition of judgment in the above entitled cause in the Supreme Court of the State of Oklahoma, it being the highest Court in said State and the Court of last recort therein, in which a decision of the questions in controversy in this action between the said L. S. Skelton, Plaintiff in Error and William H. Dill, Defendant in Error could be had, manifest error occurred and was committed by the Supreme Court of the State of Oklahoma, to the injury and damage of the Plaintiff in Error, by reason of which he feels himself aggrieved. That in the record and proceedings in this cause in the Supreme Court of the State of Oklahoma, there was drawn in question the construction of various Acts of the Congress of the United States, which said Acts and parts of Acts are as follows, to-wit:

The Act of Congress of June 10, 1896, (29 Stat. 321) in so far as said Act authorized the Commission to the Five Civilized Tribes to enroll the Indians of said tribes, and provides the procedure to be followed by such Commission in the matter of enrollment, and the authority vested in it to finally determine questions from their own records, and how such records shall be obtained.

4 The Act of Congress of March 1, 1901, (31 Stat. 861) and particularly Section 28 of said Act relating to the rolls of Citizenship, and providing for descent and distribution thereunder.

The Act of Congress of June 30, 1902, (32 Stat. 500) and particularly Section Six of said Act providing for descent and distribution of lands allotted to Creek Indians.

5 Petitioner further states that the decision of the said Supreme Court of the State of Oklahoma was against the rights and of property and privilege of the Plaintiff in Error as set up and claimed by him under and by virtue of the said Acts of Congress; and that the said above named Plaintiff in Error claimed and asserted in said proceedings that by virtue of the foregoing provisions of the various Acts of Congress hereinbefore set forth he was the owner of and entitled to the immediate possession of a certain one hundred

and sixty acre tract of land situated in the County of Okfuskee and State of Oklahoma and described as follows, to-wit:

The Northeast Quarter of Section Eighteen, (18), Township Thirteen (13) North, and Range Ten (10) East.

That the aforedescribed tract of land was allotted to one Archie Hamby a minor Citizen of the Creek Nation of Indians in the State of Oklahoma; that the said Archie Hamby died on or about the 26th day of July, 1901 and left surviving him as his heirs, his Father, A. H. Hamby who was a non-citizen of the Creek Nation, and his Mother, Dora Hamby, who was enrolled as a Citizen of said Creek Nation; that Plaintiff in Error was at the time of the institution of the original action in the State Courts of the State of Oklahoma, the owner of the above described tract of land by virtue of various instruments of conveyance passing the title from the father and mother of said Archie Hamby, to-wit, A. H. Hamby and Dora Hamby; that the said Allottee, Archie Hamby, while upon the rolls of the Creek Nation as a one-sixty-fourth Creek Indian by blood was not in fact a citizen but was an adopted Citizen of the Creek Nation and not a Creek Indian by blood; that at the time of the death of the said allottee, Archie Hamby, he was not a citizen of the Creek Nation but that his name was places upon the rolls of the Creek Nation on July 31st, 1905. That by reason of the death of the said Archie Hamby as hereinabove set forth and his enrollment thereafter as hereinabove set forth, the Plaintiff in Error became the owner of the above described tract of land which was set apart as the allotment of the said Archie Hamby, de-
6 ceased, by virtue of various instruments of conveyance from the said father and mother, A. H. Hamby and Dora Hamby:

That in the record and proceedings in said cause in the Supreme Court of the State of Oklahoma various portions of certified copies of the Original Enrollment Records of the Dawes Commission were presented in the record to sustain the contentions of the Plaintiff in Error in said Court but that the said certified copies of enrollment records were wholly disregarded by the Supreme Court of the State of Oklahoma in its decision upon the merits of said cause; and Plaintiff in Error contends that by virtue of the various Acts of Congress such enrollment Records were admissable in evidence in support of the contentions of the Plaintiff in Error that the said Archie Hamby the allottee and his mother, Dora Hamby, were not in fact citizens by blood of the Creek Nation of Indians.

Plaintiff in Error further contended in the said Supreme Court of the State of Oklahoma that by virtue of the enrollment of the said Archie Hamby as aforesaid and by virtue of his death in the month of July, 1901, that the non-citizen father A. H. Hamby was seized of a life estate in the lands in controversy in this action, which said life estate was at the institution of this cause in the State Courts of the State of Oklahoma owned and held by the Plaintiff in Error, and that by virtue of the same the Plaintiff in Error was entitled to the possession of the premises for and during the lifetime of the said A. H. Hamby.

That the said Supreme Court of the State of Oklahoma in its

decision rendered in this cause held adversely to the contentions of the Plaintiff in Error as hereinbefore set forth, and that the holdings of said Court as set forth in its decision, which is a part of the record herein, was a wrongful conclusion of the various Acts of Congress hereinbefore set forth and that thereby the rights, property and privileges of the Plaintiff in Error were taken from him by said decision of the said Supreme Court of the State of
7 Oklahoma contrary to the laws of the United States, and that he was ther-by deprived of his property rights without due process of law; and denied by said decision the equal protection of the law guaranteed to him by the Constitution of the United States.

Wherefore, Petitioner prays that he be allowed a Writ of Error and that the transcript of the record and proceedings and papers upon which the Orders and Decrees and Judgment of the said Supreme Court of the State of Oklahoma were made, duly authenticated, be sent to the Supreme Court of the United States at Washington, District of Columbia in accordance with the laws of procedure in said Court as in such cases made and provided, and that the same be inspected and corrected by this Honorable Court as the law and justice of the case requires should be done.

STANFORD & COCHRAN,
Attorneys for Plaintiff in Error.

8 UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. Harrison, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of the "Petition for Writ of Error," in the above styled cause, as the same remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Muskogee, in said District, this 3rd day of May 1912.

[SEAL.]

R. P. HARRISON, *Clerk.*
By L. S. TRIMBLE,
Deputy Clerk.

9 [Endorsed:] #1227. Filed May 8, 1912. W. H. L. Campbell, Clerk.

10 In the Supreme Court of the United States, October Term, 1912.

Number —.

L. S. SKELTON, Plaintiff in Error,
v.
WILLIAM H. DILL, Defendant in Error.

Assignments of Error.

Comes now the plaintiff in error herein, who was the plaintiff in error in the Supreme Court of the State of Oklahoma, and respectfully shows that in the record and proceedings of said cause in the Supreme Court of the State of Oklahoma errors to the great damage and wrong of the plaintiff in error herein and to the prejudice of his rights as contended for in said cause were committed, all of which are particularly set out in the following paragraphs, to-wit:

First. The Supreme Court of the State of Oklahoma erred in deciding that the Allottee, Archie Hamby, was a citizen by blood of the Creek Nation of Indians in Indian Territory and in disregarding the enrollment records of the Dawes Commission to the Five Civilized Tribes, and in not deciding that under the Act of Congress of June 10, 1896, (29 Stat. 321) such enrollment records as were introduced in this cause upon the trial thereof were conclusive upon the question of the Blood of the enrolled Citizen, to the exclusion of the Indian Roll itself, which was and is made up from the testimony taken before said Commission upon the application for enrollment of the allottee.

Second. The Supreme Court of the State of Oklahoma erred in deciding that the tract of land in controversy in this action did not pass to those who were the heirs of the allottee, Archie Hamby, deceased at the time of his death in July, 1901, under Chapter 49 of Mansfield's Digest of the Statutes of Arkansas, put in force *of* Act of Congress of June 30, 1902 (32 Stat. 500) by reason of the fact that the record in this cause conclusively shows that the allottee, Archie Hamby, was not enrolled as a Citizen of the Creek

11 Nation until after his death, and to-wit: on July 31st, 1905, which error on the part of said Supreme Court of the State of Oklahoma was a misconstruction of said Act of Congress of June 30, 1902 (32 Stat. 500.)

Third. For that the said Supreme Court of the State of Oklahoma erred in deciding that A. H. Hamby, the non-Citizen father of the deceased allottee, Archie Hamby, took no interest in the allotment of the said child by reason of its death and allotment in the Creek Nation thereafter, and that the mother, Dora Hamby, was the sole heir of said Archie Hamby, deceased, and took either by descent or purchase the entire allotment which was made to the heirs of the said Archie Hamby, deceased, which said error on the part of the said Supreme Court of the State of Oklahoma was by reason of a miscon-

struction of the Act of Congress of March 1, 1901 (31 Stat. 861) and the Act of Congress of June 30, 1902, (32 Stat. 500).

Wherefore, by reason of the errors above referred to and set forth and other manifest errors appearing in and upon the record in this cause, the Plaintiff in Error prays that the judgement of the Supreme Court of the State of Oklahoma be reversed, set aside and held for naught, and that a judgement be rendered in favor of the plaintiff in error, holding that at the time of the institution of the original action in the District Court of Okfuskee County, Oklahoma, the plaintiff in said action, William H. Dill, the defendant in error herein, was not entitled to the possession of the lands and premises described in his petition in said action, and in compliance with the prayer of said petition.

STANFORD & COCHRAN,
Solicitors for the Plaintiff in Error.

[Endorsed:] No. 1227. In the Supreme Court of the United States. L. S. Skelton, Pl'f in error, v. William H. Dill, D'f't in error. Assignment of errors. Filed May 8—1912. W. H. L. Campbell, Clerk.

12 In the Supreme Court of the United States, October Term, 1912.

Number —.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM H. DILL, Defendant in Error.

Writ of Error.

Because in the record and proceedings as also in the rendition of Judgment of a plea which is in a certain Court before you or some of you, where L. S. Skelton is Plaintiff in Error and William H. Dill is Defendant in Error, there was drawn in question the construction of certain facts of various Acts of Congress, as here set out, to-wit:

The Act of Congress of June 10, 1896, (29 Stat. 321) in so far as said Act authorizes the Commission to the Five Civilized Tribes to enroll the Indians of said tribes, and provides the procedure to be followed by such Commission in the matter of enrollment, and the authority vested in it to finally determine questions from their own records, and how such records shall be obtained.

The Act of Congress of March 1, 1901, (31 Stat. 861) And particularly Section 28 of said Act relating to the rolls of citizenship, and providing for descent and distribution thereunder.

The Act of Congress of June 30th, 1902 (32 Stat. 500) And particularly Section 6 of said Act providing for descent and distribution of lands allotted to Creek Indians.

13 And that said decision was against the rights, claims, immunity and privileges especially set out and claimed by the

said Plaintiff in Error under and by virtue of said Acts of Congress, there being manifest error in said Decision greatly to the damage of the above named Plaintiff in Error, we are willing that if there is such error it should be duly corrected, we, therefore, Command you, if Judgment be therein given under the Seal of your Court to send the records and procedure, had in said cause to the Supreme Court of the United States, so that you have the same at Washington, District of Columbia, on the 13th day of May 1912, in the Supreme Court of the United States to be then and there held, that such record may be inspected by the said Supreme Court, to the end that Justice may be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 12th day of April 1912.

[Seal of the United States District Court, Eastern District of Oklahoma.]

R. P. HARRISON,
Clerk of the District Court of the United States for the Eastern District of the State of Oklahoma.
By H. E. BOUDINOT, *Deputy.*

14 Allowed, on giving Bond as required by law, in the sum of $3,000.00.

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk.*
By JESSIE PARDOE, *Deputy.*

UNITED STATES OF AMERICA,
State of Oklahoma:

Return.

In obedience to the Command of the within Writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings had in the above cause, with all things concerning the same.

In witness whereof I hereunto subscribe my name and affix the seal of said Court, at my office in the City of Oklahoma City, Oklahoma, this 10" day of May 1912.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court of the State of Oklahoma,
By JESSIE PARDOE, *Deputy.*

15 [Endorsed:] No. 1227. In the Supreme Court of the United States. — Term, 1912. L. S. Skelton, Plaintiff in

Error, vs. William H. Dill, Defendant in Error. Writ of Error. The Clerk will recall the mandate. Turner, C. J. Apr. 13, 1912. Filed Apr. 13, 1912. W. H. L. Campbell, Clerk. Stanford & Cochran, Attorneys for Plaintiff in Error.

16 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
v.
WILLIAM H. DILL, Defendant in Error.

Supersedeas Bond.

Whereas, in the Supreme Court of the State of Oklahoma, in the above entitled cause, judgment was rendered in favor of the defendant in error and against the plaintiff in error on the — day of ——, 1912, and,

Whereas, the plaintiff in error, feeling himself aggrieved by the aforesaid decision has sued out a writ of error to the Supreme Court of the United States, which said writ of error was by the Clerk of the United States Court for the Eastern District of the State of Oklahoma, issue on the 12th day of April, 1912, and was on the 13th day of April, 1912, allowed by the Honorable J. B. Turner, Chief Justice of the Supreme Court of the State of Oklahoma and by him supersedeas bond was fixed in the amount of Three Thousand Dollars;

Now therefore, we, L. S. Skelton as principal, and M. F. Graham and Geo. W. Mitchell as sureties, acknowledge ourselves to owe and be indebted to the above named defendant in error, William H. Dill, in the sum of Three Thousand & 00/100 Dollars, good and lawful money of the United States of American, to be levied of our chattels and real estate;

Conditioned, however, as follows:

Whereas, the above named L. S. Skelton, has appealed to the Supreme Court of the United States of America, from a decision rendered in the Supreme Court of the State of Oklahoma, affirming a judgment against the said L. S. Skelton, rendered by the District Court of Okfuskee County, Oklahoma, said cause being in
17 the said Supreme Court of the State of Oklahoma entitled:

No. 1227.

L. S. SKELTON, Plaintiff in Error,
v.
WILLIAM H. DILL, Defendant in Error.

Now, if the said L. S. Skelton, plaintiff in error in said cause, and principal herein, shall in, upon and about the foregoing appeal to

the said Supreme Court of the United States abide all the orders of said Court and of the Supreme Court of the State of Oklahoma, and pay all costs and charges incident to and attendant upon said appeal, and fully satisfy any judgment that may be rendered against him in said cause; then this bond and obligation shall be void, otherwise to remain in full force and virtue; and the principal and sureties hereon bind and obligate themselves to pay to the said defendant in error, William H. Dill, all damages he may sustain by reason of said appeal to the United States Supreme Court in the aforementioned cause.

In testimony whereof, witness our hands at Okmulgee, Oklahoma, this 15th day of April, 1912.

(Signed) L. S. SKELTON, *Principal.*
(Signed) M. F. GRAHAM,
(Signed) GEO. W. MITCHELL,
Sureties.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

M. F. Graham and Geo. W. Mitchell, being by me, the undersigned authority, first duly sworn, upon oath state that they are the identical persons who executed as sureties the foregoing bond; that they are each worth more than the sum of $5000.00, above all legal exemptions and liabilities, in property subject to execution in the State of Oklahoma.

(Signed) M. F. GRAHAM.
(Signed) GEO. W. MITCHELL.

Subscribed and sworn to before me this 15th day of April, 1912.
[SEAL.] (Signed) COIL C. ALMY,
Notary Public.

My commission expires Dec. 29, 1913.

The foregoing bond is by me approved this 13" day of
18 April, 1912.
(Signed) W. H. L. CAMPBELL,
Clerk of the Supreme Court of the State of Oklahoma.
By JESSIE PARDOE, *Deputy.*

[Endorsement:] No. 1227. In the Supreme Court of State of Oklahoma. L. S. Skelton, Plaintiff in error, vs. William H. Dill, Defendant in error. Supersedeas Bond. Filed Apr. 13 1912. W. H. L. Campbell, Clerk. Stanford & Cochran, Okmulgee, Oklahoma, Attorneys for Plaintiff in error.

19 In the District Court of the State of Oklahoma in and for the Ninth Judicial District, Sitting at Okemah, Oklahoma.

WILLIAM H. DILL, Plaintiff,
v.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Case-made.

Be it remembered that heretofore, to-wit; on the third day of February, 1908, the plaintiff, William H. Dill, did commence this action against the said defendants, L. S. Skelton and W. E. Whitman, by filing in the District Court of the Ninth Judicial District of the State of Oklahoma, within and for the County of Okfuskee, his petition, which said petition is in words and figures as follows, to-wit:

Filed Nov. 22, 1909. W. H. L. Campbell, Clerk.

1227.

20 In the District Court for Okfuskee County and State of Oklahoma.

#1227.

WILLIAM H. DILL, Plaintiff,
vs.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Petition.

Comes now the plaintiff, William H. Dill, and for his cause of action against the defendants, alleges and says: That he is the owner in fee simple and has the legal and equitable estate in and to the following described real estate situated in Okfuskee County and State of Oklahoma, to-wit: The Northeast quarter of section eighteen (18), township thirteen (13) north and range ten (10) east of the Indian Base and Meridian in the aforesaid county and state; Plaintiff further states that the defendants are now and have been ever since the first day of August, 1906, wrongfully in possession of said real property, and to the exclusion of the plaintiff; plaintiff says he is now entitled to the possession of the aforesaid real property and has been ever since the first day of August, 1906, that defendants have unlawfully kept plaintiff out of the possession of the aforesaid property for one year and one half last past and have *and have* used for their own benefit, during said time, the rents and profits of the said property amounting to the sum of three hundred dollars.

Wherefore plaintiff prays for judgment for the possession of the said premises, and for five hundred dollars damages for withhold-

ing possession and for three hundred dollars for rents and profits, in all eight hundred dollars damages and for costs and other proper relief.

(Signed) W. H. DILL,
By C. T. HUDDLESTON, *Att'y.*

21 That thereafter, to-wit: on the nineteenth day of March, 1908, the defendant, W. E. Whitman, filed in the above named Court his separate answer to the petition of the plaintiff, which said answer is in words and figures as follows, to-wit:

22 In the District Court for the Ninth Judicial District of the State of Oklahoma within and for the County of Okfuskee.

No. —.

WILLIAM H. DILL, Plaintiff,
vs.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Answer.

Comes now the defendant W. E. Whitman and answering the petition of plaintiff herein filed, states that he is in possession of the lands and premises described in the petition of plaintiff; but that his possession is under and subservient to the ownership and right of possession of L. S. Skelton, his co-defendant in this cause.

Wherefore, defendant, W. E. Whitman, disclaiming any further interest or right of possession in said lands and premises other than that held under and by virtue of the ownership and right of possession of the said L. S. Skelton, prays that he, the defendant, W. E. Whitman, may go hence without day.

(Signed) H. E. P. STANFORD,
C. W. HOLBROOK,
Attorney- for Defendant W. E. Whitman.

Verification waived.

——— ———,
Attorney for Plaintiff.

23 That thereafter, to-wit, on the nineteenth day of March, 1908, the defendant, L. S. Skelton, filed in the above named Court his separate answer to the petition of the plaintiff, which said answer is in words and figures as follows, to-wit:

24 In the District Court for the Ninth Judicial District of the State of Oklahoma, within and for the County of Okfuskee.

No. —.

WILLIAM H. DILL, Plaintiff,
vs.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Answer.

Comes now the defendant, L. S. Skelton, and for his answer to the petition of plaintiff herein filed, says:

It is not true that the plaintiff, William H. Dill, is the owner in fee simple and has the legal and equitable estate in and to the North East Quarter (¼) of Section Eighteen (18) in Township Thirteen (13) North, Range Ten (10) East of the I. B. and M.

Defendant admits that he is in possession of the afore described lands and premises and has been so in possession since the 1st day of August, 1906; but denies, as alleged in petition of plaintiff, that he is wrongfully in possession of said lands and premises.

Defendant denies that plaintiff owns or ever has been entitled to the possession of said North East Quarter (¼) of Section Eighteen (18) in Township Thirteen (13) North, Range Ten (10) East; and denies that plaintiff, William H. Dill, has been damaged in the sum of Five Hundred ($500.00) Dollars, together with the sum of Three Hundred ($300.00) dollars as rents and profits of said land, or in any sum whatsoever.

And further answering, defendant says that the said W. E. Whitman, made co-defendant in this action is a tenant of this answering defendant.

25 And defendant avers the facts to be that he, the said L. S. Skelton, is seized in fee of the afore described lands and premises, and is in lawful and rightful possession of the same, under and by virtue of legal and valid deeds of conveyance from the heirs of the original allottee of the said North East Quarter (¼) of Section Eighteen (18) in Township Thirteen (13) North, Range Ten (10) East.

Wherefore, defendant prays that this action and proceeding be dismissed, and that defendant have judgment for his costs herein laid out and expended, and for all other, further and proper relief.

(Signed) H. E. P. STANFORD,
C. W. HOLBROOK,
Attorney-for Defendant L. S. Skelton.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

L. S. Skelton, being by me, the undersigned authority, first duly sworn on his oath states that he is one of the defendants in the above

entitled cause; that he has read and fully understands the contents of the foregoing answer, and that the allegations and averments therein contained are all and singular true.

(Signed) L. S. SKELTON.

Subscribed and sworn to before me this 19th day of March 1908.

(Signed) CHARLISLE MABREY,
[SEAL.] *Notary Public.*

My commission expires October 1st, 1911.

26 That thereafter, to-wit, on the twenty sixth day of March, 1908, this cause came regularly on for trial, and the right of trial by jury being waived by the parties, the cause was submitted and the issues tried to the Court, and the Court have heard said cause finds the issues for the defendants, which said judgment is in words and figures as follows, to-wit,

"Therefore it is considered, adjudged and ordered by the Court that the defendant- have and recover of and from the plaintiff all their costs expended herein for which execution may issue."

That thereafter, to-wit, on the twenty sixth day of March, 1908, plaintiff appeared by his counsel and demanded another trial, which said demand was by the Court allowed, which said order of the Court was in words and figures as follows, to-wit: "It is therefore ordered that judgment this day rendered by the Court be and the same is hereby set aside and vacated and this cause is hereby continued and stands for trial at the next regular term of this Court."

27 That thereafter to-wit: on the first day of December, 1908, this cause came regularly on for hearing and it appearing to the Court, that the presiding Judge, John Caruthers was disqualified to act in said cause, on account of having been theretofore an attorney in said cause, J. B. Patterson, a regularly practicing attorney at the bar of said Court was, by agreement of the parties selected and appointed as Special Judge to try said cause, and was by the Clerk of said Court duly sworn as required by Law.

That thereafterwards, to-wit: on the 19th day of May, 1909, the said Special Judge, John B. Patterson proceeded to take the testimony and hear the evidence on a part of both plaintiff and defendant. The evidence offered by the plaintiff was in words and figures as follows, to-wit:

28 By Mr. HUDDLESTON: Plaintiff offers in evidence as its "Exhibit A" the homestead deed to Archie Hamby, covering a portion of this land; the same being forty (40) acres. Plaintiff also offers in evidence the allotment deed covering one hundred and twenty (120) acres of land, described in this petition as plaintiff's "Exhibit B", the same being a patent from the Creek Nation to Archie Hamby.

By H. E. P. STANFORD: Admitted without objection.

Homestead Deed. Creek Indian Roll No. 9996.

The Muskogee (Creek) Nation, Indian Territory.

To all whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861) agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the lands hereinafter described has been selected by or on behalf of Archie Hamby, a citizen of said tribe, as a homestead;

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents
29 do grant and convey unto the said Archie Hamby all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz: the northwest quarter of the northeast quarter of section eighteen (18), township thirteen (13) north and range ten (10) east, of the Indian Base and Meridian, in Indian Territory, containing forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to the provisions of said act of Congress relating to the use, devise and descent of said land after the death of the said Archie Hamby; and subject, also, to all provisions of said act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 24 day of May, A. D. 1907.

P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.
Approved Jul- 5, 1907.

JAMES RUDOLPH GARFIELD, *Secretary.* [SEAL.]
By OLIVER A. PHELPS, *Clerk.*

Endorsements on Back: Commissioner's No. 31742. Homstead deed. Muskogee (Creek) Nation to Archie Hamby. Filed for record this Jan. 13, 1903 at 9 o'clock 50 m., and recorded in Book D 1 at page 379 in the records of Okfuskee County, Oklahoma. (Signed) C. W. Board, Register of Deeds. Filed for record on the 12 day of July 1907, at 4 o'clock P. M., and recorded in Book Y, Page 299. J. Geo. Wright, Commissioner to the Five Civilized Tribes. Hal Belford, Clerk. At Okemah, Okfuskee County, Oklahoma, I hereby certify that this instrument was filed for record in my office on Jan. 13, 1908 at 9:50 o'clock — M. and is duly recorded in record No. D 1, at page 379. C. W. Board, Register of Deeds. Plaintiff's "Exhibit A."

Allotment Deed. Creek Indian Roll No. 9996.

The Muscogee (Creek) Nation, Indian Territory.

To all whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as herein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Archie Hamby, a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and
31 authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Archie Hamby all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz: the east half of the northeast quarter and the southwest quarter of the northeast quarter of section eighteen (18), township thirteen (13) north and range ten (10) east, of the Indian Base and Meridian, in Indian Territory, containing one hundred twenty (120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee

(Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 24 day of May A. D. 1907.

P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.
Approved Jul- 5, 1907.
JAMES RUDOLPH GARFIELD,
By OLIVER A. PHELPS, *Clerk.* [SEAL.]

Endorsement on back: Commissioner's No. 31743. Allotment Deed. Muskogee (Creek) Nation to Archie Hamby. Filed for record this Jan. 13 1908 at 9 o'clock 45 M., and recorded in Book D 1 at page 378 in the records of Okfuskee County, Oklahoma. C. W. Board, Register of Deeds. Filed for record on the 12 day of July 1907, at 4 o'clock P. M. and recorded in Book 27, page 63. J. Geo. Wright, Commissioner to the Five Civilized Tribes. By Hal Belford, Clerk. At Okemah, Okfuskee County, Oklahoma, I hereby certify that this instrument was filed for record in my office on Jan. 13, 1908 at (:45 o'clock — M. and is duly recorded in record No. D 1 at page 378. C. W. Board, Register of Deeds.

32 By Mr. HUDDLESTON: Plaintiff now offers in evidence depositions of Archie Hamby and Dora Hamby.
By Mr. STANFORD: No objections.

In the District Court for Okfuskee County and State of Oklahoma.

WILLIAM H. DILL, Plaintiff,
vs.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Notice to Take Depositions.

The said L. S. Skelton and W. E. Whitman and C. W. Holbrook and H. E. P. Stanford, their attorneys of record, will take notice that on the 15th day of June 1908, the plaintiffs above named will take the depositions of sundry witnesses, to be used as evidence in the trial of the above cause at the — county clerk at Walthall in the county of Webster and state of Mississippi, in the court house of said county, between the hours of eight o'clock A. M. and six o'clock p. m. of said day, and that the taking of the same will be adjourned and continued from day to day at the same place and between the same hours until they are completed.

C. T. HUDDLESTON,
Attorney for Plaintiff.

33 Service of the above notice is hereby acknowledged to have been made on plaintiff this the 8th day of June, 1908.
(Signed) H. E. P. STANFORD,
Attorney for Defendants.

—— —— being duly sworn upon his oath states that he served a true and correct copy of the above and foregoing notice upon C. W. Holbrook and H. E. P. Stanford by delivering to each of them a true copy of this notice on the — day of June, 1908, at Okmulgee, Oklahoma.

—— ——.

Subscribed and sworn to before me this — day of June 1908.

—— ——,
Notary Public.

My commission expires —— —, ——.

Depositions of witnesses taken to be used in an action pending in the District Court within and for the County of Okfusgee and in the State of Oklahoma, wherein William H. Dill is plaintiff, and L. S. Skelton and W. E. Whitman are defendants, in pursuance of notice hereto attached and at the same time and place as therein stated. The said William H. Dill appeared by his agent S. M. Wilson.

And thereupon the said S. M. Wilson produced the following witnesses in order, to-wit:

A. H. Hamby, of lawful age, being duly sworn, deposeth and saith:

Q. What is your name?
A. A. H. Hamby.
Q. Where do you live?
A. Hokerdinden R. F. D. #1, Calhoun County, Mississippi.
Q. In what business are you engaged?
A. Farming.
Q. Do you know Dora Hamby?
A. I do.
Q. What relation does she sustain towards you?
A. My wife.
34 Q. How long have you and she been married?
A. Eleven years.
Q. State whether or not Dora Hamby is a citizen of the Creek Nation?
A. She is.
Q. On the Creek Freedman or Indian Roll?
A. Indian Roll.
Q. What degree of Indian blood has she?
A. 1/32.
Q. Are you a citizen of the Creek Nation?
A. I am not.
Q. Have you and Dora had any children born to you during your marriage?
A. We have.
Q. How many and what are their names?
A. Five Myrtle, Archie, Jeffie Stanford and Warren.
Q. State whether or not any of these children are Citizens of the Creek Nation and if there are how many and what are the names?

A. 2 Myrtle and Archie.
Q. What degree of Indian blood is Archie Hamby?
A. 1/64.
Q. Are both Myrtle and Archie still living?
A. Myrtle living, Archie dead.
Q. When did Archie Hamby die?
A. July 26th A. D. 1901.
Q. State whether or not any land was ever allotted to Archie Hamby or his heirs and if so give the description of the land and where it lies?
A. There was N. E. 4, Sec. (18) Eighteen, Township thirteen (13) North and Range ten (10) east of the Indian Base and Meridian.
Q. State whether or not you and Dora Hamby did on the 20th day of July, 1906, make, execute and deliver to S. M. Wilson a
35 general warranty deed in and to the northeast quarter of section eighteen (18), township thirteen (13) north and range ten (10) east of the Indian Base and Meridian?
A. We did.
Q. Did you and Dora Hamby ever execute any conveyance upon the above described land to H. E. P. Stanford or L. S. Skelton?
A. We did not.
Q. When wasArchie Hamby born?
A. February 19th A. D. 1900.
(Signed) A. H. HAMBY.

Subscribed and sworn to before me this the 15th day of June, 1908.

J. N. CARROLL,
Circuit Clerk & ex-Officio Notary Public.

Also DORA HAMBY, who, first being duly sworn, deposeth and saith:

Q. What is your name and where do you reside?
A. Dora Hamby, Hokenlinden R. F. D. # — Calhoun Co., Mississippi.
Q. Do you know A. H. Hamby and if so what relations if any does he sustain towards you?
A. I do; he is my husband.
Q. State whether or not there has been born to you and A. H. Hamby any children, and if so how many and what are their names?
A. There has, Five; Myrtle, Archie, Jeffie, Stanford and Warren.
Q. State whether or not any of the children are deceased and if so how many and what are their names?
A. Yes, one; Archie.
36 Q. When did Archie Hamby die?
A. July 26th A. D. 1901.
Q. When was he born?
A. February 9th A. D. 1900.
Q. Was any of said children citizens of the creek nation and if so on what roll were they? Freedman or Indian Roll?

A. Two were. On Indian Roll.

Q. What degree of Indian blood did Archie Hamby possess?

A. 1/64.

Q. Was any land allotted to Archie Hamby in the Creek nation Indian Territory? If so give description?

A. There was. The N. E. 4 Section Eighteen (18) Township Thirteen (13) North and Range ten east of the Indian Base and Meridian.

Q. Have you ever conveyed that land or any portion by any conveyance whatever to any one prior to the 20th day of July, 1906?

A. We have not.

Q. Did you or not on the 20 day of July, 1906, convey the land allotted to Archie Hamby, to S. M. Wilson?

A. We did.

Q. Of what degree of Indian blood are you?

A. 1/32.

Q. Is your husband a citizen of the Creek nation of Indians?

A. He is not.

Q. Through whom did Archie Hamby receive his Indian blood, you or A. H. Hamby?

A. From me.

Further *these* deponents *saveth* not.

(Signed) DORA HAMBY. *Affiant.*

Subscribed and sworn to before me this 15 day of June, 1908.

J. N. CARROLL,
Circuit Clerk & ex-Officio Notary Public.

37 STATE OF MISSISSIPPI.
County of Webster:

I, J. N. Carroll, Circuit Clerk & Ex-officio Notary Public, within and for the County of Webster and in the State of Mississippi, do hereby certify that the above named A. H. Hamby and Dora Hamby, the witnesses whose names are severally subscribed to the foregoing depositions, were by me first duly sworn to testify the truth, in the case aforesaid, and that the depositions by them respectively subscribed were reduced to writing by me J. N. Carroll (a disinterested person), and subscribed by the respective witnesses in my presence, and the same were taken on the 15 day of June, 1908, between the hours of eight o'clock A. M. and six o'clock P. M. in the County Clerk's office in the town of Walthall of the said day and in the court house of said county, in the county of Webster and State of Mississippi as specified in the notice hereto attached, and that I am not an attorney or relative of either of the said parties, or otherwise interested in the event of said action.

(Signed) J. N. CARROLL,
Circuit Clerk & ex-Officio Notary Public.
(Title of officer.)

I, A. L. Endy Chancery Clerk of Webster County, in the State of Mississippi, do hereby certify that J. N. Carroll is a duly qualified and authorized Circuit Clerk & Ex-officio Notary Public in and for the County of Webster and State of Mississippi and is in all matters within his jurisdiction authorized to act at this time, to-wit: June 15, 1908.

Given under my hand and the seal of the court on this the 15 day of June 1908.

(Signed) A. L. ENDY,
Chancery Clerk,
[SEAL.] By J. T. DALTON, *D. C.*

38 Mr. *Mr.* HUDDLESTON: The plaintiff now offers in evidence a certified copy of the rolls of Dora Hamby and Archie Hamby for the purpose of determining the degree of Indian blood.

(Here follows paster. marked page 39.)

Residence: Creek Nation.
Post Office: Okmulgee, I. T.

Creek Natior

Dawes Roll No.		Name.	Relationship to person per named.	Age.	Sex.	Blood.	Tribal enrollme Year.	Dist
9994	1	Hamby, Dora.....	Dau.....	24	F.	1/32	1895	Broken
9995	2	" Myrtle...	Dau.....	6	F.	1/64		"
9996	3	" Archie ..	Son.....	1	M.	1/64		"
9997	4	Baker, John.....	Bro.....	21	M.	1/32	1895	"

See enrollment Case = 406.

Nos. 1 and 4 on 1895 Pay Roll Broken Arrow Town.
No. 3 Born prior to May 25, 1901, died in Aug. 1901.
April 20, 1905.—Decision by Commission enrolling.
Apr. 21, 1905.—Copy to Ct. Atty. 15 days protest allowed. June
June 16, '05.—No protest.

Enrollment of Nos. 1, 2, 3, 4 Hereon approved by the Secretary of

This is to certify that I am the officer having custody of the records and foregoing is a true and correct copy of Card No. 3913.

Citizens' certificate ille*d*gible 1, 2, 3 & 4. Sept. 12, 1905.

Muskogee, Indian Territory, July 17, 1905.

Creek Nation. Creek Roll. Card No. 3913. Field No. 4613.

Sex.	Blood.	Tribal enrollment. Year.	District.	No.	Name of father.	Tribal enrollment of parents. Year.	District.	Name of mother.	Year.	District.
F.	1/32	1895	Broken Arrow..	158	Henry Baker.	....	Non-citizen.	Susan Baker.	....	Broken Arrow.
F.	1/64		" " ..	.....	A. H. Hamby	..	"	Dora Hamby	....	" "
M.	1/64		" " ..	.....	" " "	....	"	" "	....	" "
M.	1/32	1895	" " ..	159	Henry Baker.	....	"	Susan Baker.	....	Broken Arrow.

= 406.

ken Arrow Town.
died in Aug. 1901.
mission enrolling.
5 days protest allowed. June 16, 1905.

approved by the Secretary of Interior July 31, 1905.

having custody of the records pertaining to the enrollment of the Creek tribe of Indians and that the above
Card No. 3913.

& 4. Sept. 12, 1905.

1905.

(Signed) TAMS BIXBY,
Commissioner to the Five Civilized Tribes.
By HAL BELFORD, *Clerk.*

40 By Mr. HUDDLESTON: Plaintiff now offers in evidence a general warranty deed dated the 20th of July 1906, executed by Dora Hamby and her husband A. H. Hamby to S. M. Wilson conveying the land described in plaintiff's petition to the said S. M. Wilson.

By Mr. STANFORD: The defendant objects to the introduction of the deed for the reason that the acknowledgement recites that it was taken before a Notary Public, whereas in fact it was taken before A. L. Endy, whose official designation is Chancery Clerk.

By the COURT: It will be admitted for the time being and I will examine it more carefully and later pass on it as to whether it should be excluded or not.

Thereafter the Court admitted the deed in evidence over the objection of defendants above recited, to which ruling of the Court the defendants then and there excepted.

41 "EXHIBIT D," PLAINTIFF'S.

General Warranty Deed.

This indenture, made and entered into this 20 day of July one thousand nine hundred and six by and between Dora Hamby (Joined by her husband A. H. Hamby) of Wardwell, Mississippi, parties of the first part, and S. M. Wilson of Okemah, Ind Ter., party of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of Sixteen Hundred and no/100 Dollars in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, convey and confirm unto the said party of the second part the following described real estate and premises situate in the Muskogee or Creek Nation, and within the limits of the Indian Territory, to-wit: The northeast quarter of section eighteen (18), township thirteen north and range ten east of the Indian Base and Meridian, containing one hundred and sixty acres. The above described land being the allotment of Archie Hamby, my deceased child, by virtue of the said Archie Hamby being a citizen of the Creek Nation of Indians in the Indian Territory and further represent that Dora Hamby *am* a Creek Citizen, together with all the improvements thereon, and the appurtenances and immunities thereunto belonging or in any wise appertaining thereto, and warrant the title to the same.

To have and to hold the said lands unto the said party of the second part his heirs, executors, successors, administrators and assigns forever.

In witness whereof, the said parties of the first part have hereunto set our hands and seals the day and year first above written.

Witnesses:

C. T. HUDDLESTON,
P. O., Okemah, Ind. Ter.,
As to DORA HAMBY. [SEAL.]

42 C. T. HUDDLESTON,
P. O., Okemah, Ind. Ter.,
As to A. H. HAMBY. [SEAL.]

UNITED STATES OF AMERICA,
State of Mississippi, County of Webster:

Be it remembered, that on this day came before me, the undersigned, a Notary Public, within and for the State of Mississippi and County of Webster aforesaid, duly commissioned and acting as such, Dora Hamby and A. H. Hamby to me personally well known as the parties grantor in the within and foregoing deed of conveyance and stated that they had executed the same for the consideration and purpose therein mentioned and set forth, and I do hereby so certify.

And I further certify that on the same day also voluntarily appeared before me the said Dora Hamby wife of said A. H. Hamby to me well known to be the person whose name appears upon the within and foregoing deed, and in the absence of her said husband declared that she has of her own free will executed said deed, therein expressed for the consideration and purpose therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such Chancery Clerk and Ex-officio Notary Public on this 20th day of July, 1906.

(Signed) A. L. ENDY,
Chancery Clerk and ex-Officio Notary Public.

My commission expires January 1st, 1908.

INDIAN TERRITORY,
Western District, at Okmulgee, Ind. Ter.:

I hereby certify that this instrument was filed for record in my office on Jul- 28, 1906, 2 p. m. and is duly recorded in record D 18, page 245.

J. L. PEACOCK,
Deputy Clerk and ex-Officio Recorder.

43 By Mr. HUDDLESTON: Plaintiff now offers in evidence a general warranty deed dated the 28th of July, 1906, made and executed by S. M. Wilson and wife to the plaintiff William H. Dill, conveying an undivided one half interest in and to the above described premises.

By Mr. STANFORD: No objections.

44 "EXHIBIT E." PLAINTIFF'S.

General Warranty Deed.

This indenture, made and entered into this 28th. day of July one thousand nine hundred and six by and between S. M. Wilson joined by his wife Flora A. Wilson of Okemah, Ind. Ter., parties of the first part, and William H. Dill of Okemah, Ind. Ter., party of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of One Thousand Seventy Five and no/100 Dollars in hand paid, the receipt of which is hereby acknowledged,

do hereby grant, bargain, sell, convey and confirm unto the said party of the second part the following described real estate and premises situate in the Muskogee or Creek Nation, and within the limits of the Indian Territory, to-wit: An undivided one-half (½) Interest in and to the North-east Quarter of Section Eighteen (18) Township Thirteen (13) North, Range ten (10) East of the Indian Base and Meridian, containing 160 acres, more or less as the case may be according to the United States survey thereof, together with all the improvements thereon, and the appurtenances and immunities thereunto belonging or in any wise appertaining thereto, and warrant the title to the same.

And I, Flora A. Wilson wife of the said S. M. Wilson for and in consideration of the said sum of money, do hereby release and relinquish unto the said party of the second part all my right of dower and homestead in and to the said lands.

To have and to hold the said lands unto the said party of the second part his heirs, executors, successors, administrators and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

45 Witnesses:

ROY CHERNAULT,
P. O., Okemah, I. T.,
GEO. D. HARVISON,
P. O., Okemah, I. T.,

As to S. M. WILSON.

____ ____,
P. O., Okemah, I. T.,
____ ____,
P. O., Okemah, I. T.,

As to FLORA A. WILSON.

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

Be it remembered, that on this day came before me, the undersigned, a Notary Public within and for the Western Judicial District of the Indian Territory aforesaid, duly commissioned and acting as such, S. M. Wilson to me personally well known as one of the parties grantor in the within and foregoing deed of conveyance and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on the same day also voluntarily appeared before me the said Flora A. Wilson wife of said S. M. Wilson to me well known to be the person whose name appears upon the within and foregoing deed, and in the absence of her said husband declared that she had of her own free will executed said deed, and signed and sealed the relinquishment of dower and homestead therein expressed for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public on this 28th day of July, 1906.

[SEAL.] GEO. D. HARVISON,
Notary Public.

My commission expires Aug. 2, 1906.

46 INDIAN TERRITORY,
Western District, at Okmulgee, Ind. Ter.:

I hereby certify that this instrument was filed for record in my office on Jan. 26, 1907, 5 p. m. and is duly recorded in Record D 23, page 142.

J. L. PEACOCK,
Deputy Clerk and ex-Officio Recorder.

47 By Mr. HUDDLESTON: It is agreed that "Exhibit F" would be the testimony of Lee Tanner, taken by agreement.

48 PLAINTIFF'S "EXHIBIT F."

Testimony of Lee Tanner.

Q. What is your name?
A. Lee Tanner.
Q. Where do you live?
A. I live northwest about 17 miles, Welty, Okfuskee County.
Q. Are you acquainted with the N. E. -/4 of Section 18, township 13 North, range 10 east.
A. Yes.
Q. About how much of that land is in cultivation.
A. I never have measured it. I should judge something like 40 acres.
Q. Are you acquainted with a reasonable rental value of land of that character in that community in which the land is situated?
A. Yes.
Q. What is the land worth per acre?
A. I should judge about $3.00 per acre.
Q. What was it worth in the year 1906?
A. Land of that character is worth $3.00 per acre every year.
Q. What was it worth in 1907?
A. The same, $3.00 per acre.
Q. What was it worth in 1908?
A. The same.

Cross-examination my Mr. POTTER, representing the defendant, L. S. SKELTON:

Q. You say you never measured this land?
A. No, sir. I rode over it a number of times, but never measured it.
Q. What is the shape of that land?
A. It is in two pieces. One piece west of the creek, a small piece, I could not say how much, something like two acres.

49 Q. Is the balance of the land in one piece?
A. Yes. East of the creek.
Q. Is that land square in shape?
A. No.
Q. Oblong?
A. Yes, longer one way than the other.
Q. How long would it be east and west.
A. It *likes* but very little being half a mile.
Q. How wide at widest place?
A. I could not say, but quite a wide tract of land.
Q. You are guessing at the number of acres in this tract of land?
A. Yes, I think they claim it to be 40 acres.
Q. Do you know that farm land of this same character of land in that locality rents for $3.00 an acre cash rent?
A. Yes.
Q. What kind of land is this plowed land?
A. It is bottom land.

STATE OF OKLAHOMA,
Okfuskee County, ss:

Lee Tanner after being first duly sworn upon oath states that he has read the within and foregoing testimony, and that the same is true.

LEE TANNER.

Subscribed and sworn to before me this 25th day of November, 1908.

[SEAL.]

L. P. CALDWELL,
Notary Public.

My commission expires June 1, 1911.

50 By Mr. HUDDLESTON: I will introduce this deed from Ada Smith to W. H. Dill, conveying the land described in plaintiff's petition and ask to have it marked "Exhibit G."

51 PLAINTIFF'S "EXHIBIT G."

Special Warranty Deed.

This indenture, made and entered into this 18th day of February, 1907, by and between Ada Smith of Okmulgee, I. T. of the first part and William H. Dill of Okemah, I. T. party of the second part.

Witnesseth: That the said party of the first part for and in consideration of the sum of One Thousand ($1,000.00) Dollars cash in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey and confirm unto the said party of the second part the following described real estate and premises situate in the Western District of the Indian Territory, to-wit:

The North East Quarter of Section Eighteen (18), Township

Thirteen (13) North, Range Ten (10) East, together with all the improvements, appurtenances and immunities thereunto belonging or in any wise appertaining, and warrant the title to the same against the lawful claims of all persons claiming or to claim the same or any part thereof by, through or under me but against none other.

And I, James C. Smith, husband of the said Ada Smith, hereby relinquish and release unto the said William H. Dill all of my right, title and interest in and to said premises.

In witness whereof, the parties hereunto have set their hands this 18th day of February, 1907.

ADA SMITH. [SEAL.]
JAMES C. SMITH. [SEAL.]

UNITED STATES OF AMERICA,
Indian Territory, Western District, ss:

Be it remembered, That on this 18th day of February, 1907, personally appeared before me Ada Smith and James C. Smith to me personally well known as the grantors in the within and foregoing deed and stated that they had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such Notary Public this 18th day of February, 1907.

[SEAL.]

J. C. STONE,
Notary Public.

My commission expires Apr. 24, 1907.

52 INDIAN TERRITORY,
Western District, at Okmulgee, Ind. Ter.:

I hereby certify that this instrument was filed for record in my office on Feb. 18 1907 9 A. M. and is duly recorded in record D 20 page 310.

J. L. PEACOCK,
Deputy Clerk and ex-Officio Recorder.

53 By Mr. HUDDLESTON: I have nothing further but one exhibit.

The exhibit was afterwards given to the stenographer marked "Exhibit H" and is in words and figures as follows, to-wit:

54 PLAINTIFF'S "EXHIBIT H."

General Warranty Deed.

This insenture made and entered into this 23*1* day of December one thousand nine hundred and six by and between Samuel M. Wilson & Flora A. Wilson his wife of Okemah, Ind. Ter'y parties

of the first part, and Ada Smith of Okmulgee Ind. Ter'y party of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of Sixteen Hundred and no/100 Dollars in hand paid, the receipt of which is hereby acknowledged, does hereby Grant, Bargain, Sell, Convey and Confirm unto the said party of the second part the following described real estate and premises situate in the Muskogee or Creek Nation and within the limits of the Indian Territory, to-wit:

N. E. ¼ of Section 18 Eighteen, Township Thirteen (13) N. Range Ten (10) East.

Together with all the improvements thereon and appurtenances and immunities thereunto belonging on in any wise appertaining thereto, and warrant the title to the same.

And I, Flora A. Wilson wife of the said Samuel M. Wilson for and in consideration of the said sum of money do hereby release and relinquish unto the said party of the second part all my right of dower and homestead in and to said lands.

To have and to hold the said lands unto the said party of the second part, — heirs, executors, administrators and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Witnesses:

C. C. ESKRIDGE.
P. O. MORSE, *I. T.*

As to SAMUEL M. WILSON. [SEAL.]

55 C. C. ESKRIDGE.
P. O. MORSE, *I. T.*

As to GLORA A. WILSON. [SEAL.]

UNITED STATES OF AMERICA.
Indian Territory, Western Judicial District, ss:

Be it remembered, that on this day came before me, the undersigned, Notary Public within and for the Western Judicial District of Indian Territory aforesaid, duly commissioned and acting as such Samuel M. Wilson & Flora A. Wilson his wife to me personally well known as the parties grantors in the within and foregoing deed of conveyance, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day also voluntarily appeared before me, the said Flora A. Wilson wife of said Samuel M. Wilson, to me personally well known to be the person whose name appears upon the within and foregoing, and in the absence of her said husband, declared that she had of her own free will executed said deed and signed and sealed the relinquishment of dower and homestead therein expressed for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public this 31 day of Dec. 1906.

C. S. ESKRIDGE, [SEAL.]
Notary Public.

My commission expires March 5th, 1908.

Certificate of True Copy.

STATE OF OKLAHOMA,
Okmulgee County, ss:

I, J. L. Peacock, Register of Deeds in and for the County of Okmulgee State of Oklahoma duly qualified and acting as such do hereby certify that the foregoing is a full, true and complete copy of a general Warranty Deed from Samuel M. Wilson and wife to Ada Smith filed for record in my office on the 3d day of January 1907 at 2 o'clock P. M. and duly recorded in record D 23 on page 75 as the same now appears from the said record of my office.

Witness my hand and official seal at Okmulgee Oklahoma this the 2nd day of December A. D. 1908.

[SEAL.]
J. L. PEACOCK,
Register of Deeds at Okmulgee,
Okmulgee County, Oklahoma.

56 And that the evidence offered on part of defendants was in words and figures as follows, to-wit:

57 By Mr. STANFORD: The defendant now offers in evidence power of attorney from A. H. Hamby to H. E. P. Stanford, authorizing the sale of the lands in controversy dated September 2nd, 1905.

By Mr. HUDDLESTON: The plaintiff objects to the power of attorney being introduced for the reason that at the time the power of attorney was executed there *was* restrictions upon the land and he had no authority to sell or authorize any one else to sell for him, and for the further reason that A. H. Hamby had no interest in said land, and for the further reason that the power of attorney is not acknowledged as required by law and would not be notice to this plaintiff.

Objection overruled. Plaintiff excepts.

Power of Attorney.

Know all men by these presents, That, I, A. H. Hamby, of Okmulgee, Indian Territory, the husband of Dora Hamby and the father of Archie Hamby, deceased, a citizen by adoption of the Creek Nation of Indians in the Indian Territory, have this day appointed and by these presents do hereby constitute and appoint H. E. P. Stanford, of Okmulgee, Indian Territory, for me in my name, place and stead, to do and perform the following matters and things, to-wit:

1. To make execute and deliver warranty deeds, mortgages and

releases upon my interest in the allotment of my deceased child, Archie Hamby, set aside as his approximate share of the lands of the Creek Nation of Indians in the Indian Territory.

58 2. To make, execute and deliver, leases of every nature and kind including gas and oil leases upon the allotment of my said child, Archie Hamby.

3. To collect all monies that may be coming to me from the sale or from the leasing of my interest in the land of my said child, Archie Hamby, deceased.

I hereby authorize my said attorney to do and perform every necessary act in the prosecution and completion of said business in as full and ample a manner as if I were personally present.

All acts and doings of my said attorney under and by virtue of the authority herein granted to him, I here and now fully ratify and confirm.

(Signed) A. H. HAMBY.

STATE OF MISSISSIPPI.
County of Webster, ss.

Be it remembered, That on this day came before me, the undersigned, a Notary Public, within and for the above named county and state, duly commissioned and acting as such A. H. Hamby, to me personally well known to be the identical person whose name appears upon and signed to the foregoing power-of-attorney and stated to me that he had so signed and executed the same for the uses and purposes therein mentioned, contained and set forth as his free and voluntary act and deed; and I do hereby so certify.

Done at Waltshall, Sept. 2, 1905.

[SEAL.] (Signed) T. L. LAMB.

My commission will expire May 1st 1909.

INDIAN TERRITORY,
Western District, at Okmulgee, Ind. Ter.:

I hereby certify that this instrument was filed for record in my office on Sep. 14, 1905, 2 P. M. and is duly recorded in record M 12 page 95.

J. L. PEACOCK,
Deputy Clerk and ex-Officio Recorder.

59 By Mr. STANFORD: Defendant offers in evidence power of attorney from Dora Hamby to H. E. P. Stanford, authorizing the sale of the lands in controversy, said power of attorney being dated September 2nd, 1905.

By Mr. HUDDLESTON: To which the plaintiff objects for the reason that the land was restricted at that time and she had no authority or power to sell or convey the land or give any such authority to any one else, and for the further reason that she was a married woman and not authorized by law to convey any land by power of attorney and for the third reason that the land is not described

in said power of attorney sufficient to put any one upon notice, and that the acknowledgment is defective in that the word "consideration" is not used therein or no other word of similar import and would not be record notice to this plaintiff.

Objection overruled. Plaintiff excepts.

Power of Attorney.

Know all men by these presents, that I, Dora Hamby, of Okmulgee, Indian Territory, and a citizen by adoption of the Creek Nation of Indians in the Indian Territory, have this day appointed and by these presents do hereby constitute and appoint H. E. P. Stanford, of Okmulgee, Indian Territory, my true and lawful attorney, for me in my name, place and stead to do and perform the following matters and things to-wit:

1. To make, execute and deliver Warranty Deeds, mortgages and releases, for my allotment of land in the Creek Nation of the Indian Territory, selected by me as my approximate share of the lands of said Nation, save and except that portion of my said allotment set aside to me as my homestead and containing forty acres more or less.

60 2. To make, execute and deliver leases for any and all purposes including gas and oil leases, upon my said allotment of land.

3. To make, execute and deliver Warranty Deeds, Mortgages and releases, upon my interest in the allotment of my deceased — Archie Hamby, set aside to him as his approximate share of the lands of the Creek Nation of Indians in the Indian Territory.

4. To make, execute and deliver leases of every nature and kind including gas and oil leases upon the allotment of my said deceased child, Archie Hamby.

To collect all monies that may be coming to me from the Creek Nation in the Indian Territory as the result of my citizenship in said Nation.

I hereby authorize my said attorney to do and perform every necessary act in the prosecution and completion of said business in as full and ample a manner as if I were personally present. All acts and doings of my said attorney under and by virtue of the authority herein granted to him, I here and now fully ratify and confirm.

DORA HAMBY.

STATE OF MISSISSIPPI,
County of Webster, ss:

Be it remembered, That on this day came before me, the undersigned, a Notary Public, within and for said state and county, duly commissioned and acting as such, Dora Hamby, to me personally well known to be the identical person whose name appears upon and signed to the foregoing power-of-attorney and stated to me that she had signed and executed the same for the uses and purposes

therein mentioned, contained and set forth as her free act and deed; and I do hereby so certify.

Done at Waltshall Sept. 2-1905.

[SEAL.]

T. L. LAMB,
Notary Public.

My commission expires May 1, 1909.

INDIAN TERRITORY,
Western District, at Okmulgee, Ind. Ter.:

I hereby certify that this instrument was filed for record in my office on Sep. 14, 1905, 2 P. M. and is duly recorded in Record M 12 page 93.

J. L. PEACOCK,
Register of Deeds and ex-Officio Recorder.

61 By Mr. STANFORD: The defendant offers in evidence a warranty deed executed by A. H. Hamby and Dora Hamby by their attorney in fact, H. E. P. Stanford, to L. S. Skelton, dated September 13th 1905 and covering the lands in controversy.

By Mr. HUDDLESTON: To which the plaintiff objects for the reason that the lands in controversy were restricted at that time and that the said A. H. Hamby and Dora Hamby could not sell the lands described in plaintiff's petition, either by deed executed by themselves, or by power of attorney authorizing any one to do so, and for the further reason that the said Dora Hamby does not purport to do anything further than release her dower interest in said land.

Objection overruled. Plaintiff excepts.

Warranty Deed.

Know all men by these presents, that we, A. H. Hamby (a non-citizen of the Creek Nation of Indians in Indian Territory) and Dora Hamby his wife, (an adopted Citizen of the Creek Nation of Indians in Indian Territory, of Okmulgee, Indian Territory, being the sole heirs at law of Archie Hamby, deceased, also an adopted Citizen of said Creek Nation of Indians, who died intestate at the town of Bently, Mississippi, on July 27, 1901, and to the heirs of whom has been allotted by the said Creek Nation the following described land, for and in consideration of the sum of One Thousand and Six Hundred Dollars, to us in hand paid by L. S. Skelton of Fredonia, Kansas, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said L. S. Skelton and unto his heirs and assigns, that certain piece parcel or tract of land, described as follows, to-wit:

62 The North East Quarter of Section Eighteen (18), in Township Thirteen (13) North, and Range Ten (10) East of the Indian Base and Meridian in Indian Territory, containing 160 acres, more or less, as the case may be, according to the United States survey thereof, together with all the improvements thereon,

and the privileges and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the aforegranted premises to the said L. S. Skelton and his heirs and assigns, in fee simple forever; and we, the said A. H. Hamby and Dora Hamby, for ourselves and our heirs, executors and administrators do covenant to and with the said L. S. Skelton and his heirs and assigns that we are lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances, that we have good right to sell and convey the same to the said L. S. Skelton, and that we will, and our heirs, executors and administrators shall warrant and defend the same to the said L. S. Skelton and his heirs and assigns forever, against the lawful claims and demands of any and all persons.

And, I, Dora Hamby, wife of the said A. H. Hamby, for the consideration aforesaid, do hereby release, relinquish and forever waive unto the said L. S. Skelton, and unto his heirs and assigns all right, claim or possibility of dower in or out of the aforegranted premises.

In testimony whereof, we, the said A. H. Hamby and Dora Hamby, his wife, have hereunto set our hands and seals at Okmulgee, Ind. Ter. this 13th day of September, A. D., 1905.

A. H. HAMBY, [SEAL.]
By H. E. P. STANFORD,
His Attorney in Fact.
DORA HAMBY, [SEAL.]
By H. E. P. STANFORD,
Her Attorney in Fact.

63 *Acknowledgement.*

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

Be it remembered that on this day came before me, the undersigned, a Notary Public within and for the above named District and Territory, duly commissioned and acting as such, H. E. P. Stanford, to me personally well known as the identical person who signed the name of A. H. Hamby to the foregoing deed, under and by virtue of the authority granted to him in a certain power of attorney, duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory, at Okmulgee, Indian Territory, and stated that he had so signed and executed said instrument as the act and deed of the said A. H. Hamby by virtue of the foregoing mentioned authority, as his free and voluntary act and deed, and as the free and voluntary act and deed of the said A. H. Hamby, for the purposes and consideration therein mentioned and set forth, and I do hereby so certify.

And I further certify that on the same day and in the absence of the said A. H. Hamby, the said H. E. P. Stanford also stated that he had subscribed the name of the said Dora Hamby to the said deed, and signed and sealed the relinquishment of her dower

therein contained, under and by virtue of the authority granted to him in a certain power of attorney duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory, at Okmulgee, Indian Territory, as the free and voluntary act and deed of the said Dora Hamby, without compulsion or undue influence on the part of her said husband, A. H. Hamby, for the consideration and purposes therein contained and set forth.

In testimony whereof, I have hereunto set my hand and Notorial seal at Okmulgee, Indian Territory, this 13th day of September, A. D. 1905.

MARK L. BOZARTH,
Notary Public.

My commission will expire Oct. 21, 1906.

64 By Mr. STANFORD: The defendant offers in evidence a warranty deed executed by A. H. Hamby and Dora Hamby by their attorney in fact, H. E. P. Stanford, under date of July 1st, 1907, to L. S. Skelton, conveying the lands in controversy.

By Mr. HUDDLESTON: To which the plaintiff objects for the reason that said deed was executed under and by virtue of power of attorney given prior to the removal of the restrictions therefrom, and because the said Dora Hamby and A. H. Hamby had no power to sell said land because of the restrictions placed thereon by Act of Congress.

Objection overruled. Plaintiff excepts.

Warranty Deed.

Know all men by these presents, that we, A. H. Hamby (a non-Citizen of the Creek Nation of Indians in Indian Territory) and Dora Hamby, his wife, (an adopted Citizen of the Creek Nation of Indians in Indian Territory), of Okmulgee, Indian Territory, being the sole heirs at law of Archie Hamby, deceased, also an adopted Citizen of said Creek Nation of Indians, who died intestate at the town of Bentley, Mississippi, on July 27, 1901, and to the heirs of whom has been allotted by the said Creek Nation the following described land, for and in consideration of the sum of One Thousand and six Hundred dollars, to us in hand paid, by L. S. Skelton, of Okmulgee, Indian Territory, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said L. S. Skelton and unto his heirs and assigns, that certain piece, parcel, or tract of land, described as follows, to-wit:

65 The North East Quarter of Section Eighteen (18), in Township Thirteen (13) North, and Range Ten (10) East of the Indian Base and Meridian in Indian Territory, containing 160 acres, more or less, as the case may be, according to the United States survey thereof, together with all the improvements thereon, and the privileges and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the aforegranted premises to the said L. S.

Skelton, and his heirs and assigns, in fee simple forever; and we, the said A. H. Hamby and Dora Hamby for ourselves and our heirs, executors and administrators do covenant to and with the said L. S. Skelton, and his heirs and assigns that we are lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances, that we have good right to sell and convey the same to the said L. S. Skelton, and that we will, and our heirs, executors, and administrators shall warrant and defend the same to the said L. S. Skelton and his heirs and assigns forever, against the lawful claims and demands of any and all persons.

And, I, Dora Hamby, wife of the said A. H. Hamby, for the consideration aforesaid, do hereby release, relinquish and forever waive unto the said L. S. Skelton, and unto his heirs and assigns, all my right, claim or possibility of dower in or out of the aforegranted premises.

In testimony whereof, we, the said A. H. Hamby and Dora Hamby, his wife, have hereunto set our hands and seals at Okmulgee, Indian Territory, this 1st day of July A. D. 1907.

A. H. HAMBY, [SEAL.]
By H. E. P. STANFORD,
His Attorney in Fact.
DORA HAMBY, [SEAL.]
By H. E. P. STANFORD,
Her Attorney in Fact.

66 *Acknowledgement.*

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

Be it remembered, that on this day came before me, the undersigned, a Notary Public within and for the above named District and Territory, duly commissioned and acting as such, H. E. P. Stanford, to me personally well known to be the identical person who signed the name of A. H. Hamby to the foregoing deed, under and by virtue of the authority granted him in a certain power of attorney, duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory, at Okmulgee, Indian Territory, and stated that he had so signed and executed said instrument as the act and deed of the said A. H. Hamby by virtue of the foregoing mentioned authority, as his free and voluntary act and deed, and as the free and voluntary act and deed of the said A. H. Hamby, for the purposes and consideration therein mentioned and set forth, and I do hereby so certify.

And I further certify that on the same day and in the absence of the said A. H. Hamby, the said H. E. P. Stanford also stated that he had subscribed the name of the said Dora Hamby to the said deed and signed and sealed the relinquishment of her dower therein contained, under and by virtue of the authority granted to him in a certain power of attorney duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Terri-

tory, at Okmulgee, Indian Territory, as the free and voluntary act and deed of the said Dora Hamby, without compulsion or undue influence on the part of her said husband, A. H. Hamby, for the consideration and purposes therein contained and set forth.

In testimony whereof, I have hereunto set my hand and Notarial seal at Okmulgee, Indian Territory, this 1st day of July, A. D. 1907.

[SEAL.] BELLE STEHWINE,
Notary Public.

My commission expires Feb. 13, 1911.

INDIAN TERRITORY, WESTERN DISTRICT,
AT OKMULGEE, IND. TER.

I hereby certify that this instrument was filed for record in my office on Jul- 1, 1907, 9 A. M., and is duly recorded in Record D 25, page 99.

J. L. PEACOCK,
Deputy Clerk and ex-Officio Recorder.

67 By H. E. P. STANFORD:

The defendant offers in evidence a deed executed by A. H. Hamby by his attorney in fact, H. E. P. Stanford, under date of August 12, 1907, to L. S. Skelton covering the lands in controversy.

By Mr. HUDDLESTON:

To which the plaintiff objects for the reasons heretofore given as to the deeds executed by A. H. Hamby and for the further reason that the said deeds purporting to be executed, the said A. H. Hamby and Dora Hamby had no title or interest in said lands.

Objection overruled. Plaintiff excepts.

General Warranty Deed, with Relinquishment of Dower.

This indenture, made and entered into this 12th day of August, One Thousand, Nine Hundred and Seven by and between A. H. Hamby, of Benʒly, Mississippi, party of the first part, and L. S. Skelton, of Okmulgee, Indian Territory, party of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of One Thousand and Six Hundred Dollars in hand paid, the receipt of which is hereby acknowledged does hereby grant, bargain, sell, convey and confirm unto the said party of the second part the following described real estate and premises situate in the Muskogee or Creek Nation, and within the limits of the Indian Territory, to-wit:

The North East Quarter of Section Eighteen (18), Township Thirteen (13) North, and Range Ten (10) East of the Indian Base and Meridian in Indian Territory, containing 160 acres, more or less, as the case may be according to the United States survey thereof, together with all the improvements thereon, and appurtenances and

immunities thereunto belonging or in any wise appertaining thereto.

68 To have and to hold the aforegranted premises to the said L. S. Skelton, and his heirs and successors in fee simple forever; and we the said A. H. Hamby and Dora Hamby his wife for ourselves and our heirs, executors and administrators do covenant with the said L. S. Skelton and his heirs, successors and assigns, that we are lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that we have good right to sell and convey the same to the said L. S. Skelton as aforesaid; and that we will and our successors, heirs, executors and administrators shall warrant and defend the same to the said L. S. Skelton and his heirs, successors and assigns forever against the lawful claims and demands of all persons.

And I, Dora Hamby, for and in consideration of the said sum of money, do hereby release and relinquish unto the said party of the second part all my right and dower and homestead in and to the said lands.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

A. H. HAMBY, [SEAL.]
By H. E. P. STANFORD,
His Attorney in Fact.

Witnesses:

____ ____.
____ ____.

Acknowledgement.

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

Be it remembered, that on this day came before me, the undersigned, a Notary Public, within and for the above named District and Territory, duly commissioned and acting as such, H. E. P. Stanford, to me personally well known to be the identical person who signed the name of A. H. Hamby to the foregoing deed, under and by virtue of the authority granted him in a certain power of
69 attorney, duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory, at Okmulgee, Indian Territory, and stated that he had so signed and executed said instrument as the act and deed of the said A. H. Hamby, by virtue of the foregoing mentioned authority, as his free and voluntary act and deed, and as the free and voluntary act and deed of the said A. H. Hamby, for the purposes and consideration therein mentioned and set forth, and I do hereby certify.

And I further certify that on the same day and in the absence of the said A. H. Hamby, the said H. E. P. Stanford also stated that he had subscribed the name of the said Dora Hamby to the said deed, and signed and sealed the relinquishment of her dower therein contained, under and by virtue of the authority granted to him in a

certain power of attorney duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory, at Okmulgee, Indian Territory, as the free and voluntary act and deed of the said Dora Hamby, without compulsion or undue influence on the part of her said husband, A. H. Hamby, for the consideration and purposes therein contained and set forth.

In testimony whereof I have hereunto set my hand and Notorial seal at Okmulgee, Indian Territory, this 12th day of August, 1907.

[SEAL.] THOMAS D. HARRIS,
Notary Public.

My commission expires November 13, 1909.

INDIAN TERRITORY, WESTERN DISTRICT,
AT OKMULGEE, IND. TER.

I hereby certify that this instrument was filed for record in my office on Aug. 13, 1907, 8 A. M., and is duly recorded in Record D 26, page 387.

J. L. PEACOCK,
Deputy Clerk and ex-Officio Recorder.

70 H. E. P. STANFORD was first duly sworn and made the following statement:

I acted as attorney for A. H. Hamby and Dora Hamby at the time they made application for enrollment as citizens of the Creek Nation their application was, by the Dawes Commission, consolidated with that of Susan Baker and Mary E. Bowen, this statement is made for the reason that evidence will be offered taken before the Dawes Commission in the various causes.

By Mr. STANFORD:

The defendant offers in evidence a certified copy of the testimony of T. J. Adams taken before the Dawes Commission in the matter of the application for the enrollment of Mary E. Bowen as a citizen of the Creek Nation.

By Mr. HUDDLESTON:

The plaintiff objects, it is incompetent, irrelevant and immaterial and hearsay evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
MUSKOGEE, I. T., *Dec.* 12, 1903.

Cr. En. 381.

In the Matter of the Application for the Enrollment of MARY E. BOWEN et al. as Citizens by Blood of the Creek Nation.

Appearances:

A. P. Murphy, att'y for the Creek Nation.
H. E. Stanford, att'y for applicants.

T. J. ADAMS being called and sworn as a witness testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. T. J. Adams.
71 Q. How old are you?
A. I am about sixty some odd years.
Q. What is your post office address?
A. Okmulgee.
Q. Are you a citizen of the Creek Nation?
A. Yes, sir.
Q. How long have you lived in the Creek Nation?
A. I was born and raised in the Creek Nation ever since.
Q. You have lived here ever since?
A. Yes, sir.
Q. Do you know Mary E. Bowen?
A. I don't know her.
Q. Do you know whether or not Mary E. Bruner was ever admitted to citizenship in the Creek Nation?
A. She was admitted; adopted.
Q. What was her name at that time?
A. I don't know what she was named then.
Q. How is it you know she was adopted if you don't know her name?
A. Well, there two chief at that time; two chief like the chief we got now, we got one chief—we had two chief before; one was Canadian and one Tuckabatchie; and these two chief had some business between them and he went to work and appointed a certain place to meet one another to fix up the other partie's business; that place was right in my town, Holubbee Town; they both come and meet there.
Q. What do you know about the admission of Mary E. Bowen?
A. Well, I am coming; well, there was a man named D. R. McIntosh, and Cherry McIntosh and Black Bird come up there by them two parties and asked them two Governors to adopt a certain people; they had a few people, few children, numbers down somewhere along North Fork town.

72 Q. Do you know whether this woman Mary E. Bowen was admitted as a citizen or not?

A. They had a list and named them; some of the children.

Q. Do you know whether her name was on that list or not?

A. They call her name.

Q. I understood you to say you didn't know what her name was?

A. I never saw her in my life.

Q. I understood you to say you didn't know what her name was?

A. I said I didn't know her yet; her name was heard at that time.

Q. Did you know her name at the time you claim she was adopted?

A. Wasn't her name Mary?

Q. Mary what?

A. They didn't say; just named them Bob, Mary and so.

Q. When was that?

A. About 56, way before the war.

Q. Were the lists of the Creek Nation session printed?

A. No.

Q. Were they written?

A. No; he had a list of them and turned them over to the two chief; I don't know which side that name was turned to.

Q. Were the proceedings of that meeting written?

A. Well, now, I didn't paid no hard attention; 'cause they had two chief then and a man named Roley McIntosh was chief and I seen him take that bill but I don't know whether they ever had the record or not.

Q. How old were you at that time?

A. I guess about 18 or 20 years.

Examination by Mr. STANFORD:

Q. Do you know whether Jim Gentry was there at that time or not?

A. He was there.

73 Q. Do you know whether or not anything was said at that time in regard to the enrollment of his entire family and if so, what was said?

A. Well, Roley McIntosh was chief of one town, he was there and Tuckabatchie Micco was chief of the other town and was there, and old Gouge, he was speaker, he was Public Speaker; I understood from them expected to be admitted as citizens of the Creek Nation; there was a great big long list but the name of them I can't say; some was here and some wasn't here.

Q. Was there any mention made of those that were not in the Creek Nation at that time?

A. I heard him say—old Roley McIntosh say that what was here and what was not here was all adopted.

Q. All of the family?

A. Yes, sir.

Q. Do you know whether John Francis was there at that time or not?

A. I expect so; I don't know; so much people there at that time; I can't say.

Witness excused.

By Mr. STANFORD: The defendant now offers in evidence a certified copy of the testimony of John Francis taken before the Dawes Commission in the matter of the application for the enrollment of Mary E. Bowen as a citizen of the Creek Nation.

By Mr. HUDDLESTON: The plaintiff objects it is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

JOHN FRANCIS called and sworn as a witness, testified as follows:

Examination by the COMMISSION:

Q. What is your name?

A. John Francis.

74 Q. How old are you?

A. Sixty-four.

Q. What is your post office address?

A. Eufaula.

Q. Do you know Mary E. Bowen?

A. Yes, I know the Gentries.

Q. Well, do you know Mary E. Bruner?

A. I never saw her but when they adopted her they said that was — Mary went to Mississippi and they adopted them all.

Q. Do I understand you to say you don't know Mary E. Bowen, or do you know her?

A. Well, I know the Gentries and they say they adopted them.

Q. You don't know Mary E. Bowen?

A. No.

Q. Do you know anything about the adoption of the Gentry family by the Creek authorities at any time?

A. Yes, they adopted her once, I think about '56 years; 1856.

Q. Were you present at that time?

A. Yes, I was right there.

Q. Was that a session of the Creek council?

A. Yes, sir; over before the old war.

Q. Who was the chief of the Creek Nation at that time?

A. They had two chiefs; one said Roley McIntosh and the other was Tuckabatchie Micco.

Q. Were the proceedings of that meeting written?

A. Yes, Tuckabatchie Micco was there.

Q. Did they write down the proceedings?

A. No, sir; they never had no record at all.

Q. Did they adopt some people at that time as citizens of the Creek Nation?

A. Yes, they adopted and took them in just like they are *are* citizens now.

Q. Do you know the names of any of them?

A. I know one Bill Gentry and Bob Gentry and the old
75 man Gentry; yes the rolls was adopted, the whole business. All his children and all; they never had no record at that time, just took them in as an Indian.

Q. How long have you lived in the Creek Nation?

A. Have lived here ever since I have come from Alabama.

Q. When did you come from Alabama?

A. 1837, I think.

Examination by Mr. STANFORD:

Q. John, did you know Jim Gentry—old man Jim Gentry?

A. Yes, I saw him when they adopted him.

Q. He was there at that time?

A. Yes, sir.

Q. Did you hear anything said at that time in regard to the adoption of the entire Gentry family?

A. Yes, sir.

Q. What was said about that?

A. The old man said they was down in Mississippi, and they told me they sent for them; they adopted them all; I followed him up there; I went up there with him.

Q. Did you understand that the girl who was back in Mississippi was [illegible]

A. Yes, sir.

By the COMMISSION:

Q. Did these chiefs or authorities say so; did you hear them say so?

A. Yes, sir.

Q. Which ones did you hear say so?

A. Tuckabatchie Micco and old McIntosh; they was big leading mens of the Creek Nation.

76 By Mr. MURPHY:

Q. Was you a member of the Creek council at that time?

A. No, sir.

Witness excused.

By Mr. STANFORD: The defendant now offers in evidence a certified copy of the testimony of Paro Bruner taken before the Dawes Commission in the matter of the application for the enrollment of Mary E. Bowen as a citizen of the Creek Nation.

By Mr. HUDDLESTON: The plaintiff objects for the reason that it is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

PARO BRUNER called and sworn as a witness, testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. Paro Bruner.
Q. How old are you?
A. About 80 or 81.
Q. What is your post office address?
A. Paro, I. T.
Q. Do you know Mary E. Bowen?
A. Yes, sir.
Q. You know her, do you?
A. No—a sister of Scott Gentry.
Q. I want to know if you know Mary E. Bowen?
A. I never seed the woman.
77 Q. How long have you lived in the Creek Nation?
A. All my days.
Q. Were you present at the session of the Creek council about the year 1856—before the War?
A. I was a fellow-citizen in the blacksmith shop.
Q. I want to know if you was present at the council at that time?
Q. Well, I was a slave and you know a slave never had no chance to go with big people to council, yet I heard the action, proceedings of the council.
Q. You were not present?
A. No, sir.
Q. You don't know anything about what was done there?
A. Heard of it.
Q. You don't know of it of your own personal knowledge?
A. (No answer).
Q. You never was there?
A. No, but I heard them speak of it.
Q. Well, you can only tell what you know.

Examination by Mr. STANFORD:

Q. Did you ever hear any public official announcement to the effect that the Gentry family had been admitted?
A. Yes, sir.
Q. Who made that announcement?
A. Hopese Yahola-English, Old Man Gouge.
Q. Who was he? What official position did he hold with the Creek Nation?
A. Speaker of the Muskogee Nation in the General Assembly.
Q. What were the circumstances? Just tell to the stenographer what the circumstances were in connection with his making the announcement and what he said?

78 WITNESS:

A. What he said was this: There is a certain family adopted into the Muskogee Nation as full citizens of the Muskogee Nation; that is the Jim Gentry family—let it be known by all men

that that family of people are adopted to the Muskogee Nation; that was the announcement of his speech.

Q. Do you remember whether or not he said anything at that time about any of the members of the family not being in the Creek Nation at that time?

A. Yes, sir.

Q. What did he say?

A. He said there was one girl was not there; as soon as she arrove she would be recognized as good as the balance.

Q. Did he call her name?

A. Yes, sir.

Q. What was it?

A. Mary.

Q. About what year was that?

A. 1856.

Q. In regard to time, was it before or after the meeting of the two towns of the Creek council together?

A. At that time the Creeks was in a place they called the assembly of the two towns, Arkansas and Canadian colored; that was the time that they called the assembly at the Hillabee town square.

Q. How soon was it after this meeting that this speaker made this announcement?

A. It was in the same month; shortly after.

Q. Were you a member of the Colbert citizenship commission?

A. Indeed I was.

Q. Do you remember the time that the case of Mrs. Mary E. Bowen was presented to the Colbert Commission.

A. Yes, sir.

79 Q. I wish you would state to the stenographer your attitude—what you said, what action was taken with the commission with reference to that case—— (It being suggested that this is immaterial, Mr. Stanford withdraws the question.)

Examination by Mr. MURPHY:

Q. Now, Paro, you remember all this that happened over there at Hillabee as well as though it was yesterday, don't you?

A. Yes, sir.

Q. What time of day did council meet?

A. At 9 o'clock; what day of the month though I never kept that in record.

Q. Did it meet before nine or after nine?

A. That part I haven't in my mind.

Q. What was the first thing they done that day?

A. Well, Mister, I can't answer that question; we done so much; I don't keep that in recollection to know what *did* they done just before the Gentry case was up.

Q. You was a member of the council?

A. I was a commissioner.

Q. I am talking about the council, at Hillabee; was you a member of that council?

A. No, I was a slave at that time.

Q. Who was clerk?

A. I disremember.
Q. They had a clerk didn't they ?
A. Yes, sir; but I don't remember.
Q. You remember seeing them have a clerk up there don't you?
A. I disremember whether I seed that or not.
80 Q. They just had a clerk like they do now, didn't they; had a speaker and clerk, and the clerk wrote down everything they done?
A. Yes, sir; at that time it didn't interest me enough to know how all this was done.
Q. Now, at the time they made this proclamation you was talking about was that in the forenoon or afternoon?
A. This proclamation wasn't on that ground; it was a different piece of ground altogether; there was Arkansas authority and Canadian authority; these two chiefs in existence at that time, and when the Canadian meet at assembly then the old man Hopese Yahola make a remark explaining to the people at large what was done by the people at large.
Q. The- this was outside; that announcement wasn't at the Hillabee council?
A. No, sir.
Q. Then you didn't hear the proclamation?
A. Indeed if I didn't I wouldn't be here.
Q. Where was the proclamation made?
A. At the Tuckabatchie square. No, sir; that wasn't at the council; the council was over; it was done in explaining to the people what was done.
Q. Where is Tuckabatchie Micco that you talk about?
A. Dead for years and years.
Q. Where is this Yahola you talk about?
A. Dead. Died in Kansas.
Q. Do you know Roley McIntosh?
A. Old Roley McIntosh.
Q. Is he dead?
A. Dead for years and years.

(The Creek Nation had no evidence to offer further, says Mr. Murphy. Mr. Stanford says he has no more evidence.)

Henry G. Hains being sworn on his oath states that as stenographer to the Commission to the Five Civilized Tribes he reported the above proceedings on December 12, 1903, and that it is a full, true and correct — of his stenographic notes in same.

HENRY G. HAINS.

81 Subscribed and sworn to before me this 14th day of December 1903.

[SEAL.] CHARLES H. SAWYER,
Notary Public.

This is to certify that I am the officer having custody of the records pertaining to the enrollement of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the foregoing is a true and correct carbon copy of the testimony taken on Dec. 12, 1903, in the matter of the application for the enrollment of Mary E. Bowen, et al., as citizens by blood of the Creek nation.

THOS. RYAN,
Acting Commissioner.

Muskogee, Okla., June 27, 1908.

By H. E. P. STANFORD: The defendant now offers in evidence a certified copy of *copy of* the testimony of Susan Baker, Dora Hamby and W. E. Gentry, taken before the Dawes Commission in the matter of the application of Susan Baker and others for enrollment.

By C. T. HUDDLESTON: To which the plaintiff objected for the reason that it is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
MUSKOGEE, I. T., *Dec.* 17, 1903.

In the Matter of the Application of SUSAN BAKER for the Enrollment of Herself and Her Minor Children, John, Sallie, Walter, Elbert, Abbie, Litha, Ivy, and Lila Baker, as Citizens of the Creek Nation.

Appearances:

H. E. Stanford, attorney for applicants.

82 SUSAN BAKER, being duly sworn testified as follows:

Q. What is your name?
A. Susan Baker.
Q. How old are you?
A. Forty four year old.
Q. What is your post office address?
A. Okmulgee.
Q. Do you make application for enrollment as a citizen by blood of the Creek Nation? As a Creek by blood? Do you claim Creek blood?
A. Yes, sir.
Q. What degree of blood do you claim?
A. Sixteenth.
Q. Have you any minor children for whom you desire to make application?
A. Yes, sir.
Q. What is the name of your oldest child?
A. Dora, she has a family. John is the next one.

Q. How old is John?
A. Nineteen.
Q. What is the name of the next?
A. Sallie; she's 16.
Q. The next?
A. Walter; 14.
Q. Next?
A. Elbert; he's 10; Abbie she's 8; Litha 7; Iva, 6; Lila, 3.
Q. When was Lila born?
A. In '99.
Q. What month and day of the month?
A. 14th of November.
Q. 1899?
A. Yes, sir.
Q. What is the next one?
A. This baby here; she is only four months old; I don't want to apply for her.

83 Q. Do these children you have named all live with you?
A. Yes, sir.
Q. They are all living?
A. Yes, sir.
Q. To what town in the Creek Nation do you belong?
A. Broken Arrow.
Q. Have you ever drawn any money from the Creek Nation?
A. Yes, sir.
Q. When?
A. In 1884.
Q. Have you since 1884?
A. No, sir.
Q. How much did you draw?
A. I dis-remember.
Q. Where do you reside Mrs. Baker?
A. Okmulgee.
Q. How long have you lived at Okmulgee?
A. I have just come; not long.
A. How long?
A. I just got here a week ago.
Q. Where did you reside before you came to Okmulgee?
A. Mississippi.
Q. How long did you live in Mississippi?
A. I *ahev* been there all my life.
A. Have you ever been in the Creek Nation before this?
A. Yes, sir.
Q. When was that?
A. When I was small; when I was a child; I don't remember how long it has been.
Q. What is the name of the father of your children?
A. Henry.
Q. Is he living or dead?
A. Living.

84 Q. Does he claim to be a citizen of the Creek Nation?
A. No, sir.
Q. Does he claim to be a citizen of any Indian tribe in the Indian Territory?
A. No.
Q. He is a white man is he?
A. Yes, sir.
Q. Has no Indian blood?
A. No, sir.
Q. Did you draw for yourself and Dora and John your children the $14. payment?
A. No, sir.
Q. Have you moved to the Creek Nation in good faith for the purpose of making it your home?
A. Yes, sir.
Q. Do you own any property in the Creek Nation?
A. No, sir.
Q. What is the name of your father?
A. Tom Gordon.
Q. What is the name of your mother?
A. Mary E. Bowen.

The 1895 pay roll of the Creek Nation examined and Susan Baker identified thereon at Broken Arrow town at No. 157; and Dora Baker at # 158, and John Baker at # 159. It appears that they have been listed for enrollment on Creek Indian card Field # 3141, and that their names were stricken from said card, W. E. Gentry having filed with the Commission his affidavit as to each of the persons that they died prior to April 1, 1899, and his affidavit being corroborated by the affidavits of Caddo Wadsworth; said affidavits having been executed October 11, 1901. The same are made a part of the record herein.

Q. What is the name of your married daughter?
A. Dora Hamby.
Q. How old is she?
A. She's 23 years old in March.
Q. Has she any children?
A. She's got three; one dead.
85 Q. What is the name of that one that's dead?
A. Archie.
Q. When did Archie die?
A. Two years ago in August I believe.
Q. How old was he when he died?
A. A year old.
Q. Was he the oldest child?
A. No; Myrtle Hamby is the oldest.
Q. How old is she?
A. Five years old.

Myrtle is present and appears to be about as old as stated.
Q. What is the name of her next child?
A. Jeffie Hamby.

Q. How old is he?
A. A year old.

Attorney for applicant states that no application is made for this one.

Q. Where does your daughter Dora live?
A. In Okmulgee now; she did live in Mississippi.
Q. Did she come to this country with you?
A. Yes, sir.
Q. Have you heard her express an intention as to whether or not she intends to make this Creek Nation her home?
A. No, sir.

Examination by Mr. STANFORD:

Q. Do you actually intend to come to the Creek Nation to live?
A. Yes, as quick as the old man can wind up his business he will come.

By the COMMISSION:

Q. Where is he?
A. In Misissippi winding up his business.

86 By Mr. STANFORD:

Q. You are now making arrangements to come to the Creek Nation to live?
A. Yes, sir.
Q. The claim to Creek citizenship you have it through your relationship to Mary E. Bowen, is it, being a daughter of Mary E. Bowen?
A. Yes, sir.

In the Matter of the Application for the Enrollment of DORA HAMBY and Her Minor Children, Myrtle and Archie Hamby, as Creek Citizens.

H. E. Stanford, Att'y for Applicants.

DORA HAMBY being duly sworn testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. Dora Hamby.
Q. How old are you?
A. 22.
Q. What is your post office address?
A. Okmulgee.
Q. What is the name of your father?
A. Henry Baker.
Q. Is he living?
A. Yes, sir.
Q. Does he make any claim to citizenship in the Creek Nation?
A. No, sir.

Q. He is a white man is he?
A. Yes, sir.
Q. Has no Indian blood?
A. No, sir.
87 Q. What degree of blood do you claim?
A. The Catawba.
Q. I believe your mother claims to be a sixteenth?
A. I would be the thirty-second.
Q. You have some children, have you?
A. Yes, sir.
Q. What is the name of the oldest?
A. Myrtle.
Q. How old is Myrtle?
A. She's five years old.
Q. That is the child that is here with you?
A. Yes, sir.
Q. What is the name of the next one?
A. Archie.
Q. Is Archie living or dead?
A. Dead.
Q. When did he die?
A. In 1901.
Q. What month and what day of the month?
A. 27th of July.
Q. How old was he when he died?
A. 16 months old.
Q. You have no other children have you?
A. Yes, sir.
Q. How old is that child?
A. 13 months' old.
Q. You make any application for that child?
A. No.
Q. Have you a record any where of the birth and death of Archie? Did you write it down in the Bible or anything of that kind?
A. Yes, sir; at home.
Q. You wrote it down in the Bible?
A. Yes sir.
88 Q. Of the birth and death?
A. Yes sir.
Q. What is the name of the father of your children?
A. A. H. Hamby.
Q. Does he claim to be a citizen of any tribe in Indian Territory?
A. No, sir.
Q. White man, is he?
A. Yes, sir.
Q. Where is he?
A. In Mississippi.
Q. Have you removed to the Creek Nation for the purpose of making it your home?
A. Yes, sir.

Q. Is it the intention of your husband to come to the Creek Nation?
A. Yes, sir.
Q. How soon does he intend to come to the Creek Nation?
A. As soon as he can get here; as soon as we can get things arranged to get here.
Q. Do you own any property in the Creek Nation, or does your husband?
A. No, sir.
Q. Have you moved your household goods to the Creek Nation?
A. No, sir; not all together; just as soon as we can get her-.
Q. Has your mother moved any of her household goods here?
A. Only just a few things she brung; we didn't have them so arranged that we could bring them with us.

By Mr. STANFORD:

Q. It is your intention from this hour on to make the Creek Nation your permanent home?
A. Yes sir.

89 Applicant excused, and W. E. GENTRY called as a witness, testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. W. E. Gentry.
Q. How old are you?
A. I will be 62 the 11th of next March.
Q. What is your post office address?
A. Checotah.
Q. Do you know Susan Baker?
A. Yes, sir; that's the lady was here; that I understood was the one.
Q. Do you know Dora Hamby?
A. —.
Q. Who was formerly Dora Baker?
A. No, I don't know her; well, I met her here, and that's my understanding, but I don't know her in the former days.
Q. Do you know John Baker who is said to be a son of Susan Baker?
A. I understand they had two children; a boy and a girl.
Q. Is Susan Baker living or dead?
A. She was in here just now.
Q. What about Dora?
A. The one I understand was Dora was with her.
Q. Do you know anything about John being living or dead?
A. No, sir.
Q. There are on file with the Commission, Mr. Gentry, affidavits executed by you on October 11, 1901, from which it appears that Susan Baker, Dora Baker, and John Baker died prior to the 1st day of April, 1899.

A. That was my information at that time.

90 Q. I understand you then that the affidavit that you executed at that time was from information?

A. Yes, sir.

Q. Not from your personal knowledge?

A. No, sir.

Q. Do you know Caddo Wadsworth?

A. Yes, sir.

Q. Do you desire now to say Mr. Gentry that you were mistaken when you executed those affidavits—that those people were dead?

A. Yes, I know it to be a mistake.

Q. Where does Caddo Wadsworth live?

A. About 8 miles S. E. of Checotah.

Q. Is he relat*i*ved to those people?

A. No, sir; not that I know of; I am satisfied he is not.

Q. Do you know whether he ever knew them or not?

A. I suppose he did when they were here in this country; I think he did.

By Mr. STANFORD:

Q. What relation are you to Susan Baker, if any?

A. I am her uncle; she is my sister's child.

Q. You know that she had two children?

A. Yes, sir.

Q. Did you know their names?

A. Dora and John is my understanding; a boy and a girl.

By the COMMISSION:

On page 39 of the records of the Colbert Commission the following entry appears:

"We the Citizenship Committee of the Muskogee Nation having duly considered and weighed the evidence in the case of Mary E. Bowen in her application for citizenship in the Muskogee Nation, are of the opinion that the said Mary E. Bowen is not a citizen of the Muskogee because the evidence in her case shows that she has no Creek Indian blood in her veins. The evidence shows further that she was not a member of Jim Gentry's family, but was living with her husband in the State of Mississippi at the time her father and his family were adopted into the Creek Nation."

JAMES COLBERT,
Pres. Commission.

J. H. LYNCH, *Clk.*"

91 HENRY G. HAINS being duly sworn on his oath states that as stenographer to the Commission of the Five Civilized Tribes he reported the above case December 17, 1903, and that this is a full, true and correct transcript of his stenographic notes in same.

HENRY G. HAINS.

Subscribed and sworn to before me this 17th day of December, 1903.

[SEAL.] EDWARD MERRIC,
Notary Public.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the foregoing is a true and correct carbon copy of the testimony taken on Dec. 17, 1903, in the matter of application of Susan Baker, et al., as citizens of the Creek Nation.

THOS. RYAN,
Acting Commissioner.

Muskogee, Okla., June 27, 1908.

92 By Mr. STANFORD: The Defendant offers in evidence a certified copy of the testimony W. E. Gentry taken before the Dawes Commission in the matter of the application of Mary E. Bowen et al., for citizenship.

By Mr. HUDDLESTON: To which the plaintiff objects for the reason it is incompetent, irrelevant and immaterial and is hear-say evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
MUSKOGEE, I. T., *Nov.* 27, 1903.

In the Matter of the Application for the Enrollment of MARY E. BOWEN et al. as Citizens by Blood of the Creek Nation.

WILLIAM E. GENTRY being duly sworn testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. William E. Gentry.
Q. What is your age?
A. Sixty one.
Q. What is your Post Office address?
A. Checotah.
Q. Mr. Gentry, do you know Mary E. Bowen, who has made application to this Commission for enrollment as a citizen by blood of the Creek Nation?
A. I know Mary E. Bowen; I didn't know she had made application.
Q. Do you know her children?
A. I don't know as I know all of them.
Q. James W. Bowen has made application for the enrollment of himself and his six minor children, James H., Derusha C., William B., Mary L., Chester C., and Omie; and Elijah Bowen has made

application for himself and his two minor children, William C., and Mary E.; and Rachel Chancellor has made application for herself and her minor child, Loney; James Bowen, Elijah Bowen and Rachel Chancellor claim to be the children of Mary E. Bowen.

93 A. Yes sir; she has two boys and one girl; I don't remember the names; I have seen them.

Q. Is Mary E. Bowen a sister of yours?

A. Yes sir, same father and mother. Two year older than I am.

Q. Do you know whether she is a citizen of the Creek Nation?

A. No, sir.

Q. How did you become a citizen of the Creek Nation?

A. Was adopted in '55.

Q. Do you know anything of the proceedings had before the national council at the time your father and his family or part of his family wer- adopted as citizens?

A. Very little; I was about 13 year old then; I know my father went to council and was adopted at council.

Q. Do you know whether Mary E. Bowen was adopted as a citizen of the Creek Nation?

A. Not at that time. She was in Mississippi then; him and his family was adopted.

Q. Were all the other members of his family living in the Creek Nation at that time?

A. Yes sir.

Q. Do you know whether there was an objection made to the enrollment of Mary E. Bowen, or whether he made application for her to the Creek Council?

A. I don't know only of just application for himself and family as I understand; there was no objection that I know of. I don't know that her name was mentioned, or any of ours; don't know how that was.

Q. Has Mary E. Bowen ever been recognized by the Creeks as a citizen of the Creek Nation by adoption?

A. I can't say she was or was not; she was over about Broken Arrow a good while when I lived down here; over there with my brother; they were working at it; I don't know what they did.

Q. What town do you belong to?

A. Broken Arrow.

Q. Do you know whether any money was ever drawn for Mary E. Bowen from the Creek Nation?

94 A. Not as I know of.

Q. Do you know whether she drew the $29 in 1890, or whether it was drawn for her?

A. No sir, I don't know.

Q. Do you know whether she drew the $14.40 in 1895, or whether it was drawn for her?

A. No sir, I don't know whether she ever drew any or not.

Q. Do you know whether any money was ever drawn for her?

A. No sir, I don't know.

Q. There was an application made in 1896 to the Colbert Com-

mission on citizenship for the enrollment of Mary E. Bowen and others——

A. I don't know.

Q. Do you know whether there has been any application made to the Creek National Council for the enrollment of Mary E. Bowen and her children since 1896?

A. Not that I know.

Q. Do you know whether Mary E. Bowen was ever known by any other name?

A. Gordon; she never was known after she came here except as Bowen; she married a Gordon and he was killed down there.

Q. When was Mary E. Bowen first in the Creek Nation?

A. I think it was about 1878.

Q. Do you know how long she stayed here that time?

A. No, sir, I don't know; think she remained here only a few years.

Q. Do you know when she came here the next time?

A. I *a*ught to know but I don't know; I know she was over there a while, and then later moved down in the bottom; I think it must have been 8 or 10 years ago—and then when she came in this last time I don't know.

Q. Do you know whether she was here during the time of the making of the 1890 roll or the $29 payment?

A. No sir; I don't remember her being here at the time of any payment was made. Because I was at the payments myself and don't remember of her being here at the time any of the payments was made.

95 Henry G. Hains being sworn on his oath states that as Stenographer to the Commission to the Five Civilized Tribes he Reported the above proceedings on November 27th 1903, and that this is a full, true and correct transcript of his Stenographic notes in same.

(Signed) HENRY G. HAINS.

Subscribed and sworn to before me this 28th day of November, 1903.

[SEAL.] (Signed) CHARLES H. SAWYER,
Notary Public.

This is to certify that I am the officer having custody of the Re*o*crds p*ur*taining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said Tribe-, and that the foregoing is a true and correct carbon copy of the testimony taken on Nov. 27, 1903, in the matter of the application for the enrollment of Mary E. Bowen et al., as citizens by blood of the Creek Nation.

(Signed) THOS. RYAN,
Acting Commissioner.

Muskogee, Oklahoma, June 27, 1908.

96 By Mr. STANFORD: Defendant now offers in evidence a certified copy of the evidence of Archie Hamby taken before the Dawes Commission in the matter of the application of Susan Baker et al., as citizens of the Creek Nation.

By Mr. HUDDLESTON: The plaintiff objects for the reason that it is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
MUSKOGEE, I. T., *April 5th*, 1905.

In the Matter of the Application for the Enrollment of SUSAN BAKER *et* al. as Citizens by Blood of the Creek Nation.

H. E. P. Stanford, Attorney.

ARCHIE HAMBY, being first duly sworn, testified as follows:

Examination by the Commission:

Q. What is your name?
A. Archie Hamby. Given though as Russ I think it is. I am not certain.
Q. How old are you?
A. Twenty eight years old.
Q. What is your post office address?
A. Okmulgee.
Q. Are you a white man?
A. Yes, sir.
Q. A citizen of the United States are you?
A. Yes, sir.
Q. What is the name of your wife?
A. Dora Hamby.
97 Q. Is she an applicant for citizenship in the Creek Nation?
A. Yes, sir.
Q. Under that name?
A. Yes, sir.
Q. How many children has she?
A. Has three; two are living and one is dead.
Q. What are the names of these children?
A. Myrtle, Archie and Jeffie.
Q. Which one is dead?
A. Archie.
Q. When did Archie die?
A. He died in 1901.
Q. What time in that year do you remember?
A. 27th of July.
Q. Mr. Hamby, are you at present living in the Creek Nation?
A. Yes, sir.
Q. How long have you lived in the Creek Nation?

A. Well, I came here last August.
Q. What day in August, do you know?
A. I don't recollect what day it was; I have forgot.
Q. Did you appear before the Commission in August last year?
A. Yes, sir.
Q. How long a time before your appearance was your removal here?
A. About three days I think it was.
Q. Where did you come from?
A. Mississippi.
Q. What point in Mississippi?
A. Why, near Benton, a railroad town.
Q. Did you bring your family with you at the time you came—your wife and children?
A. Yes, sir.
Q. Have you resided continuously in the Indian Territory from the date in August when you came here up to the present time?
A. Yes, sir.
98 Q. Did you bring your household goods—your personal possessions—with you at the time you came?
A. Yes, sir.
Q. Did you come here with the intention of making the Creek Nation your future home?
A. Yes, sir.
Q. Did any other members of your wife's family come with you at the time you came?
A. That young gentleman in there.
Q. John Baker?
A. Yes, sir.
Q. What have you been doing in Okmulgee since that time?
A. Farming some and cutting wood, and picked cotton last fall.
Q. Have you got a house there that you live in?
A. Yes, sir.
Q. You rent it?
A. Yes, sir.
Q. Is it in the city of Okmulgee?
A. Yes, sir.
Q. Been doing some farming this year have you?
A. Yes, sir.
Q. Has John Baker, your wife's brother, remained in Okmulgee ever since he came out here at that time?
A. Yes sir.
Q. It is your intention at this time to make the Creek Nation your permanent home?
A. Yes, sir.
Q. Your wife is at present living with you is she?
A. No, sir; not now she isn't here. She's gone back to her mother's.
Q. But you have been living together continuously as man and wife?

A. Yes, sir; but she's gone back to her mother's in Mississippi.

99 Q. Did she go back there with the intention of leaving the Creek Nation and making Mississippi her home?

A. No, sir; just gone back there for a short while.

Q. You still have your house in Okmulgee have you?

A. Yes, sir.

Q. It's just in the nature of a visit—her return to Mississippi?

A. Yes, sir.

Q. Are your wife's mother and father and the other members of her family living in Mississippi?

A. Yes, sir.

Q. And the other members of the family with the exception of John Baker?

A. Yes, sir; they're all in Mississippi.

Q. They have never come to the Creek Nation and remained any length of time?

A. No, sir; about three weeks I think is the longest they remained.

Q. When was that?

A. Last December was a year ago.

By Mr. STANFORD:

Q. What is the real -eason, Mr. Hamby, for your wife's absence in Mississippi at this time?

A. She's gone back there for her mother to be with her when she's confined.

Q. Is she in that kind of a condition that it would be possible for her to be present before the Commission?

A. No, sir.

Q. How soon will she probably be confined?

A. Why, it will be—I expect about two months.

Q. After her recovery from this confinement what is your intention with reference to her residence, will she remain in Mississippi or come to the Indian Territory?

A. She will come back to Okmulgee.

100 By the COMMISSION:

Q. It's your intention to still keep your house in Okmulgee for her return?

A. Yes, sir.

Albert G. McMillan, being first duly sworn, states that as stenographer to the Commission to the Five Civilized Tribes he reported the proceedings in the above entitled cause on the 15th day of April 1905, and that the above and foregoing is a true transcript of his stenographic notes thereof.

ALBERT G. McMILLAN.

Subscribed and sworn to before me this 6th day of April, 1905.

EDWARD MERRICK,
Notary Public.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct carbon copy of the testimony taken on April 5, 1905, in the matter of the application for the enrollment of Susan Baker, et al., as citizens of the Creek Nation.

THOS. RYAN,
Acting Commissioner.

Muskogee, Okla., June 27, 1908.

101 By Mr. STANFORD: The defendant now offers in evidence a certified copy of the testimony taken before the Dawes Commission of Mary E. Bowen in the matter of her own application of citizenship.

By Mr. HUDDLESTON: To which the plaintiff objects for the reason that it is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
MUSKOGEE, IND. TER., *October 26th,* 1903.

In the Matter of the Application for the Enrollment of MARY E. BOWEN as a Citizen by Blood of the Creek Nation.

Appearances:

H. E. P. Stanford, Attorney for applicant.

MARY E. BOWEN, being first duly sworn by R. R. Cravens, notary public testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. Mary E. Bowen.
Q. What is your age?
A. Sixty-six (66).
Q. What is your post office address?
A. Wetumka.
Q. Do you make application for enrollment as a citizen of the Creek Nation by blood?
A. Yes, sir.
Q. What degree of blood do you claim?
A. My father was a quadroon Indian.
102 Q. Creek?
A. Yes, sir.
Q. What was your mother; a white woman?
A. Yes, sir.
Q. You don't claim to be a full blood Creek Indian?

A. No, sir; I am not a full blood Creek Indian. Of course, my mother was a white woman and my father was an Indian.

Q. Where do you reside? Do you live in the Creek Nation?

A. Yes, sir.

Q. How long have you lived in the Creek Nation?

A. I have lived in it a long time.

Q. Well, this last time?

A. Three years.

Q. Where did you live before you came to the Creek Nation the last time?

A. In Mississippi.

Q. How long did you live in Mississippi?

A. About three years, or four.

Q. Did you ever live in the Creek Nation before the present time?

A. Yes, sir.

Q. When was that?

A. I have lived in the Creek Nation twice before that.

Q. About when was it; how long ago?

A. Well, about thirty years ago, I lived here and then about ten years ago I lived here.

Q. When you lived here ten years ago, how long did you live here that time?

A. Two years.

Q. Do you remember what year it was you came to the Creek Nation then?

A. I don't know.

103 Q. Did you live in the Creek Nation soon after the Civil War?

A. Yes, sir.

Q. How long after?

A. About three years afterward; maybe not quite so long.

Q. To what town in the Creek Nation do you claim to belong?

A. To the Broken Arrow. That was where our names was put when I was here.

Q. Have you ever drawn any money from the Creek Nation?

A. No, sir.

Q. Do you claim to have been admitted to citizenship in the Creek Nation by the Creek authorities; adopted, I believe you call it?

A. Yes, sir; I guess I have; I just go by what my brother—He said I was. He said I had citizenship and my children went to school. I had them in school, the Indian school; my oldest children.

Q. From the information you have about when was it that you claim to have been adopted?

A. I don't know as I can exactly tell you that.

Q. Was it before or after the war?

A. After the war.

Q. How long had it been since you were in the Creek Nation before you came the last time?

A. About four years; three or four years. I don't remember exactly which.

Q. How long has your name been Bowen?
A. Ever since '67.

1890 Authenticated Tribal Roll of the Creek Nation examined and the name of the applicant not found thereon.
1891 Omitted Pay Roll of the Creek Nation examined, and the name of the applicant not found thereon.
1895 Pay Roll and 1895 Omitted Pay Roll of the Creek Nation examined and the name of the applicant not found on either of said rolls.

104 The records of the Creek Nation in possession of the Commission examined and it appears that the applicant herein applied to the Creek Citizenship Commission, under the provisions of the Creek National Council, approved May 30, 1895, for admission to citizenship in the Creek Nation, said application being dated July 10, 1895, and that thereafter said Commission rendered the following judgment:

"We, the citizenship committee of the Muskogee Nation, having duly considered and weighed the evidence in the case of Mary E. Bowen in her application for citizenship in the Muskogee Nation, are of the opinion that the said Mary E. Bowen is not a citizen of the Muskogee, because the evidence in her case shows that she has no creek Indian blood in her veins. The evidence shows further that she was not a member of Jim Gentry's family, but was living with her husband in the State of Mississippi at the time her father and his family were adopted into the Creek Nation."

Q. Were you ever admitted by the Commission to the Five Civilized Tribes as a citizen of the Creek Nation, under the Act of June 10, 1896?
A. No, sir; I did not myself.
Q. Well, was any application made for you?
A. Well, my brother Scott.

The list of citizens admitted by the Commission to the Five Civilized Tribes, under the Act of June 10, 1896, examined and the name of the applicant not found thereon, nor does it appear that she made any application for enrollment to the Commission under said Act.

Direct examination.

By H. E. P. STANFORD:

Q. Mrs. Bowen do you know about the time that your father and his family were adopted into the Creek Tribe, the Creek Nation?
A. It has been about 54 years as well as I can remember.
Q. About fifty-four years ago?
A. Yes, sir.

105 Q. Were you here in the Creek Nation at that time?
A. No, sir; I was in Mississippi. I married. My father come here after I was married and I did not come with him.
Q. Were you married at the time your father was adopted in the Creek Nation?

A. Yes, sir.

Q. When did you first come to the Creek Nation; about what year?

A. In '67.

Q. Where did you live in the Creek Nation at that time?

A. Why, I lived up here close to Eufaula.

Q. Do you know whether or not you were ever placed on the Creek Rolls?

A. No, sir; I don't exactly know whether I was or not. I was told by my brothers that I was. They said they put my name on, but I don't exactly know.

Q. Did you ever make any arrangements of any kind to draw any Creek payments from the United States Government?

A. I never did, but before I left here the last time, they told me I had better stay; that it would not be long before they would draw. I told them to draw for me.

Q. Did you give them any order for your money?

A. No, sir; I just told my brother Bill to draw for me.

The undersigned, being sworn states that as stenographer to the Commission to the Five Civilized Tribes he recorded in full the testimony and proceedings in the above and foregoing matter of the application of Mary E. Bowen for enrollment as a citizen by blood of the Creek Nation, and that the above and foregoing is a true and complete transcript of his stenographic notes thereof.

R. R. CRAVENS.

Subscribed and sworn to before me this the 27th day of October, A. D., 1905, at Muskogee, Indian Territory.

[SEAL.]

WM. O. BEALL,
Notary Public.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said Tribes, and that the foregoing is a true and correct carbon copy of the testimony taken on Oct. 26, 1903, in the matter of the application of Mary E. Bowen, as a citizen by blood of the Creek Nation.

THOS. RYAN,
Acting Commissioner.

Muskogee, Oklahoma, June 27, 1908.

106 By Mr. STANFORD: The defendant offers in evidence a certified copy of the testimony of Tommy Jones taken before the Dawes Commission, in the matter of the application of Mary E. Bowen et al., for citizenship in the Creek Nation.

By Mr. HUDDLESTON: The plaintiff objects for the reason that it is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
Dec. 17, 1903, MUSKOGEE, I. T.

Cr. En. 381.

In the Matter of the Application for the Enrollment of MARY E. BOWEN et al. as Citizens of the Creek Nation.

The Creek attorney was advised of the hearing — this case at this time and informed the Commission that he could not be present. He offers no objection to the hearing of evidence during his absence.

Appearance:

H. E. P. Stanford, att'y for applicants.

TOMMIE JONES being duly sworn testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. Tommie Jones.
Q. How old are you?
A. I am 42 years old.
Q. What is your post office address?
A. Okmulgee.
107 Q. What is the name of your father?
A. Tom Gordon.
Q. Is he living or dead?
A. He's dead.
Q. Was he a citizen of the Creek Nation?
A. No, sir.
Q. Was he a citizen of any tribe in the Indian Territory?
A. No, sir.
Q. He was a white man?
A. Yes, sir.
Q. What is the name of your mother?
A. Mary E. Bowen.
Q. She is the person who has heretofore made application for enrollment as a citizen of the Creek Nation?
A. Yes, sir.
Q. Do you make application for enrollment as a Creek by blood?
A. No.
Q. You don't claim to be a Creek by blood?
A. No, sir.
Q. Have you any Creek blood at all?
A. Well, I was always taught that it was by adoption of the Catawbas.
Q. Have you any children for whom you desire to make application?
A. Well, I have three children.
Q. Where do they live?

A. They live with me.
Q. What is the name of the oldest one living?
A. Eddie; he is 20 years old.
Q. What is the name of the next?
A. Mary Jones.
Q. How old is she?
A. Eighteen.
Q. What is the name of the next?
A. Henry.
Q. How old is Henry?
A. He is about 15 years old.
108 Q. You have no other children?
A. No, sir.
Q. What is the name of their father?
A. Brigham Jones.
Q. Is he a citizen of the Creek Nation?
A. No, sir.
Q. Is he a citizen of any tribe in Indian Territory?
A. No, he ain't no Indian at all.
Q. He is a white man?
A. Yes, sir.
Q. Has any money ever been drawn for you or any of your children from the Creek Nation?
A. If they have I don't know.
Q. Did you ever make application for the enrollment of yourself and children to the Creek citizenship Commission commonly known as the Colbert Commission?
A. My uncle did for me. At least he said he did.
Q. Have you a sister named Susan?
A. Yes, sir.
Q. One name- Pink?
A. Yes, sir.
Q. Have you a brother named Thomas?
A. No.
Q. Is your name Thomas or Tommie?
Q. Well, of course it was Thomas. I was named after my father but they always called me Tommie.

It appears from the records of the Colbert Commission that application was made to said Commission for the admission of Thomas Gordon to citizenship in the Creek Nation, it appearing from the application that the said Thomas Gordon was a child of Mary E. Bowen who is identified as the principal applicant herein.

In 1890 and 1895 rolls of the Creek Nation, and the 1891 and 1895 omitted rolls of the Creek Nation examined and the names of none of the applicants are found thereon.

Q. You claim the right to enrollment as a citizen of the Creek Nation solely through your mother?
A. Yes, sir.
109 Q. And through the admission, as it is claimed of her to citizenship in the Creek Nation?
A. Yes, sir.

Q. You desire that the testimony which has been offered in her case be considered in your case?
A. Yes, sir.

It is ordered that this case be consolidated with the application of Mary E. Bowen et al.

Henry G. Hains being sworn on oath states that as stenographer to the Commission to the Five Civilized Tribes he reported the above case December 17, 1903, and that this is a full, true and correct transcript of his stenographic notes in same.

HENRY G. HAINS.

Subscribed and sworn to before me this 17th day of December, 1903.

[SEAL.]

EDWARD MERRICK,
Notary Public.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said Tribes, and that the foregoing is a true and correct carbon copy of the testimony taken on Dec. 17, 1903, in the matter of the application for enrollment of Mary E. Bowen et al., as citizens of the Creek Nation.

THOS. RYAN,
Acting Commissioner.

Muskogee, Okla., June 27, 1908.

110 By Mr. STANFORD: The defendant offers in evidence a certified copy of the testimony of John Baker, taken before the Dawes Commission in the matter of the application of the enrollment of Susan Baker et al. as citizens of the Creek Nation.

By Mr. HUDDLESTON: We object for the reason that the same is incompetent, irrelevant and immaterial and is hearsay evidence.

Objection overruled. Plaintiff excepts.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
MUSKOGEE, I. T., *Dec.* 29, 1903.

Additional Testimony.

In the Matter of the Application for the Enrollment of SUSAN BAKER et al. as Citizens of the Creek Nation.

Appearances:

H. E. P. Stanford, att'y for applicants.
A. P. Murphy, att'y for Creek Nation.

JOHN J. BAKER, being called as a witness and duly sworn, testified as follows:

Examination by the COMMISSION:

Q. What is your name?

A. Henry Baker; Henry is a nick-name that the Gentry family give me; my wife's uncle; my name is J. J., the way I sign it; that's the way my boy's name is too; my uncle just give me that nick-name; I sign J. J.

Q. What uncle?

A. Scott Gentry.

Q. What is your age?

A. Forty-three years old.

111 Q. What is your post office address?

A. My post office address here is Okmulgee.

Q. Do you know Susan Baker?

A. Yes.

Q. Is she your wife?

A. Yes, sir.

Q. Have you children by her?

A. Yes, sir.

Q. State their names?

A. One's named Dora Lee; one named Mandy Jane, she's dead; my oldest boy is John Marion Michael; the next girl is Sally; Ellen; the next boy is Walter Jefferson; the next boy is Elbert Lee; the next little girl is Abbie Elizabeth; the next little girl is Elisha Jane; the next little girl Iva Yancis; my last little girl May Nila; my baby one, five months old, she's named Homer Floyd.

Q. When did Mandy Jane die?

A. She would have been twenty years old last July if she had of lived, and she died at six years old.

Q. Have you a child named Lila?

A. Well, that the little girl; we call her May Manila.

Q. Where do you reside now?

A. Okmulgee.

Q. In the Creek Nation?

A. Yes, sir.

Q. How long have you resided in the Creek Nation?

A. Only a short time; just gotten in a few days ago.
Q. How many days ago?
A. I got in last Sunday.
Q. Where did you come from to the Creek Nation?
A. I come from Mississippi.
112 Q. What place in Mississippi?
A. Calhoun county.
Q. Did you own any property there?
A. Yes, I have got some personal property there.
Q. Of what does it consist?
A. Well, it is cattle and horses and hogs and such like, I haven't got any land.
Q. Do you still own those cattle and things?
A. Yes, I have got some stuff out there.
Q. How long do you expect to own it?
A. No longer than I can dispose of it.
Q. You intend to dispose of it?
A. Yes, sir; I intend to make this country my home.
Q. Did you move any of your property to the Creek Nation when you came?
A. Nothing only just our clothing that we wear.
Q. Do you own any household goods in Mississippi?
A. Yes, sir; my household furniture is still there; we came in a hurry, and I would have had to give it away; I will have to go back to my own state to wind up my business.

Examination by Mr. STANFORD:

Q. Do you know Scott Gentry?
A. Yes, sir.
Q. Do you know W. E. Gentry?
A. Old man Bill?
Q. Yes.
A. Yes, sir.
Q. What relation are they to you?
A. My wife's uncles.
Q. Have they ever been to your place in Mississippi?
A. Yes, sir.
113 Q. How long ago?
A. Old man Bill has been there this coming February four years, and Scott ten years ago; stayed with us about a month out there.
Q. Have you made any arrangements at Okmulgee with reference to making that your home?
A. I have rented a house down there.
Q. And you say you expect to move your household goods and stuff there as soon as you can go back to Mississippi and arrange your affairs there?
A. Yes, sir, as quick as I can arrange my affairs there.

Examination by Mr. MURPHY:

Q. What did you say your first name was?

A. My first name is John Baker; I sign it J. J. The Henry name is only a nick-name.

Q. You don't claim to be a citizen of the Creek Nation?

A. I have come here to make it my home.

Q. You don't mean to say that you are an Indian by blood or anything like that?

A. No, sir.

Q. You said awhile ago that you were in such a hurry to come to the Creek Nation that you didn't dispose of your effects; what was your hurry?

A. My connection here has been working on my wife's rights here and they written her that they wanted me to come; at the first they didn't know that they would need me; when she got the news she come out here a few weeks ago, and after she found out it was necessary she written for me to come at once; I didn't take time.

Q. Then you don't propose to dispose of your property in Mississippi until you ascertain whether your wife and children are put on the rolls and get land here, do you?

A. Well, I can't sell out till I have a home to go to.

114 Q. I understand you to say that you don't intend to sell out down there until you find out whether your wife and children are put on the rolls here and get land here; is that right?

A. Well, I aim to come to this country as quick as I can wind up my business and come.

Q. But you don't intend to sell out down there until you find out whether your wife and children are put on the rolls here and get land here?

A. Well, of course if I cannot get a home; if we haven't got anything here I will be compelled to stay where I am at.

Q. Then you will not sell your stuff down there and move your stuff here until you find out whether you have land here; don't intend to move here permanently until you find whether your wife and children get land here?

A. Yes, sir; I aim to come here.

Q. I say if your wife and children don't get land here and are not enrolled here you don't intend to sell your stuff down there in Mississippi, but you intend to go back; ain't that right?

A. Yes, sir; I have got to go back.

Q. Then you are just waiting here at Okmulgee to see whether your wife and children are enrolled and are given land; that's the fact?

A. Yes sir.

Q. And that's what your wife and children are here for?

A. Yes, sir.

Q. The only claim to citizenship in this Nation as an Indian of your wife is by virtue of her being a daughter of Mary E. Bowen, isn't it?

A. Yes, sir.

Q. And that's the only Indian blood she claims is through Mary E. Bowen?
A. Yes, sir.

115 Examination by Mr. STANFORD:

Q. Mr. Baker, in regard to establishing a home here, do you now consider that there is any doubt as to whether your wife will get land here or not; your own opinion about it; Is there any doubt in your mind but what she will get land here?
A. No, sir; if there had been I wouldn't have taken the trip.
Q. Then is there any doubt in your mind as to making the Creek Nation your home?
A. No, sir.

By Mr. MURPHY:

Q. But if she don't get land there is a doubt?
A. I would rather be a renter here than in Mississippi, in a strange land this-a-way, a man has to stay where he is let.

Examination by the COMMISSION:

Q. Have you any property in the Creek Nation?
A. Nothing but my wife and children and their clothing. We just haven't had any change to get it here.
Q. Whom are you living with?
A. My brother in law.
Q. What is his name?
A. Mr. Evans; this gentleman here.
Q. You haven't rented any property?
A. Have rented a house.
Q. You have rented a house from him?
A. Yes, sir.
Q. Are you living with him?
A. Yes, sir; in the same house with him; I have things to put in my house.

116 Excused and

ALBERT H. HAMBY called as a witness and being duly sworn testified as follows:

Examination by the COMMISSION:

Q. What is your name?
A. A. H. Hamby I sign it.
Q. What does the A. H. Stand for?
A. Albert Hamby. I sign my name A. H. Hamby.
Q. What is your age?
A. 27 years.
Q. What is your post office address?
A. Okmulgee.
Q. Are you a citizen of any Nation in the Indian Territory?
A. No, sir.

Q. You make no claim to citizenship in any Indian Tribe?
A. No, sir.
Q. Do you know Dora Hamby?
A. Yes, sir; that's my wife.
Q. Have you any children by her?
A. I have three.
Q. State their names?
A. One named Myrtle; the other Archie and the other Jeffie.
Q. How old is Jeffie.
A. A little better than a year old.
Q. Where do you live now?
A. At Okmulgee.
Q. Do you claim that as your residence?
A. Yes, sir.
Q. How long have you lived there?
A. I came in Sunday.
Q. Where did you come from?
A. Mississippi.
Q. Do you own any property in Mississippi?
A. Yes, sir.
117 Q. Of what does it consist?
A. Horses, stock and cattle, hogs and such; don't own any land.
Q. Any household goods?
A. Yes, sir.
Q. Does this stock and the household goods still belong to you?
A. Yes, sir.
Q. Have you a place rented in Mississippi?
A. Yes, sir.
Q. You live on it under contract?
A. Yes, sir.
Q. The contract is still in effect is it?
A. Yes, sir.
Q. Have you rented any property in the Creek Nation?
A. A house at Okmulgee.
Q. A whole house or part of it?
A. Part of a house; one room of a house.
Q. Do you rent it furnished or did you buy furniture for it?
A. Rented it furnished.
Q. Do you own any property at all in the Creek Nation?
A. No, sir; only just my clothing—wife and children.
Q. How long do you expect to live in the Creek Nation?
A. I can't tell you that; I expect I will make it my home the balance of my days.
Q. You expect you will?
A. That's my intention.
Q. You are not positive of it?
A. No, sir.
Q. Why?
A. I don't know whether I will get any property here or not; whether I can own any property or not.

Q. You haven't positively decided then whether you will reside in the Creek Nation or not?
A. That's my idea; yes sir; that's my notion.

118 Examination by Mr. STANFORD:

Q. Do you think there is any doubt about your wife being entitled to citizenship here?
A. No, sir.

Mr. MURPHY: The Creek Nation objects to this question; it is a question of law for the Commission to decide.

Mr. STANFORD:

Q. Is there any doubt in your mind as to whether or not you will establish a home in the Creek Nation?
A. That's my intention, yes, sir.
Q. What will it be necessary for you to do in order to do that with reference to your present home?
A. My intentions is to go back to the old State and wind up my business.

Examination by the COMMISSION:

Q. Why didn't you dispose of your property before you came here?
A. Didn't have time.
Q. How did you expect to establish a residence here?
A. Well, I came here for that purpose; to establish a residence here.
Q. Do you consider that you have established a residence here now?
A. Yes, sir.
Q. By virtue of what? How do you consider that you have established a residence here?
A. Well, I have rented one is all.
Q. Rented a room?
A. Yes, sir.

Examination by Mr. STANFORD:

Q. Your family are here, are they?
A. Yes, sir.
Q. What relation are you to Mr. Baker?
A. That's my father in law is all.

119 Examination by Mr. MURPHY:

Q. Your wife is a daughter of Susan Baker who has made application for enrollment here?
A. Yes, sir.
Q. The only Indian blood that she claims is through Susan Baker?
A. Yes, sir.
Q. And the only Indian blood that she claims is through Mary E. Bowen?

A. Yes, sir.

Q. You're just in the same shape that Mr. Baker is, that if you are not enrolled here and get land you are going back to Mississippi?

A. I don't know whether I will go back.

Q. Then you haven't made any arrangements as to a home in Okmulgee?

A. Only just a room.

Q. Then you don't intend to go back and dispose of your property until you find out whether your wife and children are enrolled?

A. No, sir.

Q. You intend to keep that until you find out that?

A. Yes, sir.

Statement by Mr. MURPHY: The Creek Nation has no evidence to offer in this case and contends that as Mary E. Bowen was denied citizenship by the Colbert Commission and it was therein found that she was not a citizen of the Muskogee Nation because the evidence in her case shows that she has no Creek Indian blood in her veins, and because she was not a member of Jim Grentry's family or any Indian family, that the names of Susan Baker, Dora Baker and John Baker, the children of said Mary E. Bowen, are therefore not citizens of the Creek Nation, and are fraudulently on the 1895 pay roll of the Creek Nation; and we ask that they be stricken therefrom as was decided by the Department of the Interior in the matter of the application for the enrollment of Ross Hawkins.

120

By the COMMISSION: It devolves upon the Creek Nation to prove that the names of Susan, Dora and John Baker are upon the 1895 authenticated roll by fraud or without authority of law.

By Mr. MURPHY: The Creek Nation contends that the evidence sufficiently shows that by virtue of them claiming through Mary E. Bowen, it having been decided that she is not a citizen by blood.

Henry G. Hains being sworn on his oath states that as stenographer to the Commission to the Five Civilized Tribes he reported the above proceedings on December 29, 1903, and that the above and foregoing is a full, true and correct transcript of his stenographic notes in same.

HENRY G. HAIMS.

Subscribed and sworn to before me this 30th day of December, 1903.

[SEAL.]

EDWARD MERRICK,
Notary Public.

This is to certify that I am the office- having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above — foregoing is a true and correct carbon copy of the testimony taken on

Dec. 29, 1903, in the matter of the application for the enrollment of Susan Baker, et al., as citizens of the Creek Nation.

THOS. RYAN,
Acting Commissioner.

Muskogee, Okla., June 27, 1908.

This was all the evidence in the case.

121 That thereafterwards, to-wit: on the 19th day of May, 1909, the said Special Judge, John B. Patterson proceeded to render his findings of fact and conclusions of law, which said find-s of fact and conclusions of Law are in words and figures as follows, to-wit:

122 W. H. DILL, Plaintiff,
vs.
L. S. SKELTON, Defendant.

This is a suit in ejectment by W. H. Dill against L. S. Skelton for the possession of the N. E. ¼ of Sec. 18, Twp. 13 N. Range 10, E. in Okfuskee County, Oklahoma.

Plaintiff claims title by reason of the following:
Creek Nation to Archie Hamby, deed.
Archie Hamby to Dora Hamby, inheritance.
Dora Hamby and husband to S. M. Wilson, deed.
S. M. Wilson and wife ½ interest to W. H. Dill, deed.
S. M. Wilson and wife ½ interest to Ada Smith, deed.
Ada Smith and husband to W. H. Dill, deed.

Defendant Claims title by reason of the following:
Creek Nation to Archie Hamby, deed.
Archie Hamby to A. H. Hamby and Dora Hamby, inheritance.
A. H. Hamby and Dora Hamby to H. E. P. Stanford, Power of Attorney.
H. E. P. Stanford, Attorney in fact, to L. S. Skelton.

The Court finds that Dora Hamby and Archie Hamby were mixed blood Indians; that both are enrolled upon the final rolls of the Creek Tribe of Indians as such; that Dora is enrolled as 1/32 Indian and Archie is 1/64.

That there was allotted and deeded to Archie Hamby as his share of the lands of the Creek Tribe the N. E. ¼ of Sec. 18 Twp. 13 N. Range 10 East in Okfuskee County, which is the land in controversy.

That Archie Hamby died on July 26th, 1901, and that his mother, Dora Hamby, is still living.

The Court find that on the 2nd day of September, 1905, A. H. Hamby, the husband of Dora Hamby and the father of Archie Hamby, executed to H. E. P. Stanford a power of attorney
123 generally to make deeds and leases for him; that no consideration is mentioned in the body of the instrument or

acknowledged in the acknowledgement, and no particular land or other property is mentioned in this power of attorney.

That on the 2nd day of September, 1905, Dora Hamby also executed to H. E. P. Stanford her general power of attorney; that it does not recite any consideration or acknowledge any consideration, and does not mention or describe any particular land or property; that Dora Hamby was — married woman at this time, and her restrictions as a Creek citizen from alienating her lands had not been removed by act of Congress or the Secretary of the Interior.

That on dates Sept. 13, 1905, July 1", 1907 and Aug. 12", 1907, H. E. P. Stanford as attorney in fact of A. H. Hamby and Dora Hamby, executed and delivered to the defendant L. S. Skelton a deed to the lands above mentioned, which are the lands in controversy.

The Court also finds that on the 20" day of July, 1906, Dora Hamby and A. H. Hamby, the father and mother of Archie Hamby, executed and delivered to S. M. Wilson a warranty deed conveying to S. M. Wilson the allotment of Archie Hamby mentioned above; that this was subsequent to the Act of Congress of April 26", 1906, removing the restrictions from mixed blood Creek Indians.

That on the 28th" day of July, 1906, S. M. Wilson and wife by warranty deed conveyed to William H. Dill, the plaintiff, an undivided ½ interest in this land.

That on the 31st day of December, 1906, Samuel M. Wilson and Flora Wilson, his wife, by warranty deed conveyed to Ada Smith, and on the 18" day of Feb., 1907, Ada Smith, joined by her husband, James C. Smith, by warranty deed, conveyed to the plaintiff William H. Dill all her interest in this land.

It is admitted that the defendant has been in the possession of this land since August, 1906.

124 The Court finds the rental value of this land to be One Hundred and Twenty Dollars per year.

(Signed) J. B. PATTERSON,
Judge Pro Tempore.

125 That thereafter to wit: on the 19th day of May, 1909, the Court rendered Judgment on the findings of fact and conclusions of law of the said special Judge, which said Judgment is in words and figures as follows, to-wit:

"It is therefore Considered, Ordered adjudged and Decreed by the Court, that the said plaintiff, W. H. Dill have and he is hereby awarded Judgment against the said defendant L. S. Skelton, and that said Judgment be for the possession of the land and premises in controversy herein and for money Judgment, for all of which the said plaintiff is awarded writ of possession and execution for Judgment and costs herein laid out and expended as will more fully appear in the final Decree to be entered herein."

To which Judgment of the Court the defendants then and there excepted.

That thereupon, on the said 19th day of May, 1909, the Court

rendered its Decree, to which Decree the defendants then and there duly excepted, said Decree being in words and figures as follows, to-wit:

126 In the District Court for Okfuskee County, State of Oklahoma.

W. H. DILL, Plaintiff,
vs.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Journal Entry.

Now on this 19th day of May, 1909, this cause came on to be heard in its regular order, before J. B. Patterson, Judge Pro Tempore herein agreed upon by the plaintiff and the defendants and the Court having at the last term of the said Court, heard all the evidence introduced by the plaintiff and defendants, the plaintiff appearing by his attorney, C. T. Huddleston and the defendants by their attorney H. E. P. Stanford, and the defendant W. E. Whitman having disclaimed any right or interest in said premises and the Court having taken said cause under advisement after hearing all the evidence introduced in said cause at the last regular term of this Court, and the Court being fully advised in the premises finds the issue in favor of the plaintiff and against the defendant L. S. Skelton.

The Court finds that Dora Hamby and Archie Hamby were mixed blood Creek Indians; that both are enrolled upon the final rolls of the Creek Tribe of Indians as such; that Dora is enrolled as 1/32 Indian and Archie is enrolled as 1/64.

That there was allotted and deed- to Archie Hamby as his share of the lands of the Creek Tribe the N. E. ¼ of Sec. 18, Twp. 13, N., Range 10 East; in Okfuskee County, which is the land in controversy. That Archie Hamby died on July 26th 1901, and that his mother, Dora Hamby, is still living.

The Court finds that on the 2 day of September, 1905, A. H. Hamby the husband of Dora Hamby and the father of Archie Hamby, executed to H. E. P. Stanford a power of attorney
127 generally to make deeds and leases for him; that no consideration is mentioned in the body of the instrument or acknowledged in the acknowledgment, and no particular land or other property is mentioned in this power of attorney.

That on the 2 day of September, 1905, Dora Hamby also executed to H. E. P. Stanford her general power of attorney; that it does not recite any consideration, and does not mention or describe any particular land or property; that Dora Hamby was at this time a married woman, and her restrictions as a Creek Citizen from alienating her lands has not been removed by Act of Congress or the Secretary of the Interior.

That on dates of September 13th, 1905, July 1st, 1907 and August 12th, 1907, H. E. P. Stanford as attorney in fact of A. H.

Hamby and Dora Hamby, executed and delivered to the defendant, L. S. Skelton, deeds purporting to convey to L. S. Skelton the lands mentioned which are the deeds in controversy.

The Court also finds that on the 20th day of July, 1906, Dora Hamby and A. H. Hamby, the father and mother of Archie Hamby, executed and delivered to S. M. Wilson a warranty deed conveying to S. M. Wilson the allotment of Archie Hamby, mentioned above; that this was subsequent to the Act of Congress of April 26th, 1906, removing the restrictions from mixed blood Creek Indians inheriting land.

That on the 28th day of July, 1906, S. M. Wilson, and wife, by warranty deed conveyed to William H. Dill, the plaintiff, an undivided ½ interest in this land.

That on the 31st day of December, 1906, Samuels M. Wilson and Flora Wilson his wife, by warranty deed conveyed to Ada Smith the aforesaid land and on the 18th day of February, 1907, Ada Smith joined by her husband, James C. Smith, by warranty deed conveyed to the plaintiff William H. Dill all of her interest in this land.

128 It is admitted that the defendant has been in the possession of this land since August, 1906.

The Court finds *that* the rental value of this land to be One Hundred and Twenty Dollars per year.

The Court finds that the plaintiff, William H. Dill is the owner in fee simple of the land in controversy in this suit to-wit: The North East Quarter of Section Eighteen (18) Township Thirteen (13) North and Range Ten (10) East in Okfuskee County, Oklahoma.

The Court further finds that the plaintiff, W. H. Dill, is entitled to possession of the one half interest of the above described land, and was, on the 20th day of July, 1906, and that the defendant, L. S. Skelton and W. E. Whitman have no right, title or interest in and to the above described land and that the plaintiff W. H. Dill on the 18th day of February, 1907, purchased from Ada Smith the remaining undivided one half interest and has since that day been entitled to possession of all the above described land.

The Court further finds that the plaintiff and defendants in this case have waived a Jury trial and agreed that the same should be tried by the Court.

It is therefore ordered, adjudged and decreed by the Court that the plaintiff have and recover from the defendants W. E. Whitman and L. S. Skelton, possession of the land in controversy in this suit, to-wit: The North East Quarter of Section Eighteen (18) Township Thirteen (13) North and Range Ten (10) East, for which let writ of possession be issued.

It is further adjudged and decreed that Plaintiff have and recover from the defendant L. S. Skelton the sum of $300.00 as damages for wrongfully detaining the possession of said premises from this plaintiff for which let execution issue and it is further adjudged and decreed that plaintiff have and recover his costs from the

defendant, L. S. Skelton, assessed at the sum of $——, for
129 which let execution issue.

Witness my hand and seal of said Court and done in Open Court this the 19th day of May, 1909.

[SEAL.] (Signed) J. B. PATTERSON,
Judge pro Tempore.

130 That thereafter, to-wit: On the 21st day of May, 1909, the defendants filed in the above named Court their Motion for New Trial, which said Motion is in words and figures as follows, to-wit:

131 In the District Court within and for the Ninth Judicial District of the State of Oklahoma, Okfuskee County, at Okemah, Oklahoma.

Before Honorable J. B. Patterson, Acting Judge.

No. 42.

WILLIAM H. DILL, Plaintiff,
v.
L. S. SKELTON and W. E. WHITMAN, Defendants.

Motion for New Trial.

Come now the defendants in the above entitled cause, and move the court to set aside and vacate the judgment of the court rendered against the defendants herein on the 26th day of May, 1909, and to grant to the defendants a trial anew for the reasons and upon the grounds following, to-wit:

1. For that the judgment of the Court is contrary to the law.

2. For that the judgment of the Court is contrary to and not supported by the evidence introduced at the trial.

3. For that the judgment of the Court is contrary to both the law and the evidence, and is unsupported by either the law or the evidence.

4. For that the Court erred in admitting in evidence over the objection of the defendant the pretended deed of conveyance dated the 20th day of July, 1906, from Dora Hamby and A. H. Hamby to S. M. Wilson, covering the lands in controversy, for the reason that the certificate of the officer purporting to have taken the acknowledgments of the parties grantor is defective and there is nothing in the record to show that the said officer "A. L. Endy" was authorized by law to take this or any other acknowledgment, and for the reason that said pretended deed of conveyance is not under seal.

5. For that the court erred in that portion of its findings of fact in which it determined that Dora Hamby and Archie Hamby were mixed blood Indians.

6. For that the Court erred in that portion of its findings of fact in which it determined that in the powers of attorney executed on the 2nd day of September, 1905, by A. H. Hamby and Dora Hamby to H. E. P. Stanford 'no particular land or other property is mentioned' or 'does not mention or describe any particular land or property.'

7. For that the Court erred in that portion of its findings of fact in which it determined that on the 2nd day of September, 1909, the restrictions upon the alienation of the above described tract of land (the lands in controversy) had not been removed by Act of Congress.

8. For that the court erred in that portion of its findings of fact in which it determined that the deeds of conveyance from Dora Hamby and Archie Hamby to S. M. Wilson under date of July 20th, 1906, and from S. M. Wilson & wife to William H. Dill under date of July 28th, 1906, and from Samuel M. Wilson and Flora Wilson, his wife, under date of December 31, 1906, to Ada Smith, and from Ada Smith, joined by her husband James C. Smith, to William H. Dill under date of Feb'y 13, 1907, covered title to the lands in controversy to the respective grantees therein.

132 9. For that the Court erred in failing to find from the evidence not only the date of the death, but also the date of the birth of Archie Hamby, deceased.

10. For that the Court erred in failing to find from the evidence that Dora Hamby and Archie Hamby were Citizens by Adoption of the Creek Nation of Indians, and not Citizens by Blood.

11. For that the Court erred in decreeing the title to the land in controversy to be vested in the plaintiff, William H. Dill.

12. For that the Court erred in finding that the plaintiff, William H. Dill, was entitled to the possession of the lands in controversy.

13. For that the Court erred in rendering judgment against the plaintiff in the sum of $300.00 for the wrongful possession of the lands in controversy.

14. For that the Court erred in failing to find:

1st. That the lands in controversy, upon the death of the allottee, descended to the father and mother of the decedent, A. H. Hamby and Dora Hamby under the laws of descent and distribution of the Creek Nation, and that said lands were unrestricted on the 2nd day of September, 1905, and were by good and sufficient conveyances transferred to the Defendant, L. S. Skelton, and that said L. S. Skelton was at the time of the commencement of this action entitled to the possession of said lands; or

That the lands in controversy, upon the death of the allottee, descended under the laws of descent and distribution of the State of Arkansas, and that the father, A. H. Hamby became seized of a life estate therein upon the death of Archie Hamby, and that by good and sufficient conveyances such life estate had been transferred to L. S. Skelton, and that at the commencement of this action, he, the said L. S. Skelton, the defendant herein, was en-

titled by virtue thereof to the possession of the lands in controversy in this action.

And for the reason above set forth and for various other grievous errors appearing in and upon the record, the defendants state that their substantial rights have been prejudiced.

(Signed) STANFORD & COCHRAN,
Attorneys for the Defendants.

133 That thereafterwards, to-wit: on the 26th day of May, 1909, the said Motion for New Trial was by the Court overruled, to which ruling of the Court the defendants then and there duly excepted.

The defendants thereupon on said 26th day of May, 1909, prayed an appeal which prayer for appeal was by the Court allowed and the defendants were given Sixty days in which to make, serve and file a Case-made, and the plaintiff was given Ten days thereafter in which to suggest amendments the same to be settled upon Five days' Notice in writing by either party; and defendants' Supersedeas Bond fixed by the Court at the sum of One Thousand Dollars.

134 The foregoing contains a true and correct statement of the pleadings, Motions, Orders, evidence, findings and proceedings upon which Judgment was rendered.

135 I, the undersigned attorney for the plaintiff in the above entitled cause do hereby certify that the foregoing Case-Made was duly served on my on this 23rd day of July, 1909.

(Signed) C. T. HUDDLESTON,
Attorney for Plaintiff.

136 In the District Court of Okfuskee County.

Before J. B. Patterson, Special Judge.

No. —.

WILLIAM H. DILL, Plaintiff,
vs.
L. S. SKELTON et al., Defendant-.

Stipulation.

It is hereby stipulated and agreed by and between plaintiff and defendants, that defendants' time in which to settle Case Made be extended to October 20th, 1909; and plaintiff's time in which — suggest amendments is hereby extended to October 14, 1909.

(Signed) C. T. HUDDLESTON,
Attorney for Plaintiff.

(Signed) STANFORD AND COCHRAN,
Attorneys for Defendant-.

The extension of time agreed upon in the above Stipulation is hereby granted.

(Signed) J. B. PATTERSON,
Special Judge.

137 I, the undersigned Judge Pro Tempore of the District Court for Okfuskee County, Oklahoma, hereby certify that the foregoing was presented to me as a Case Made in the action above entitled at the Court House in Okemah, Okfuskee County; the defendant in Error appearing by his attorney, C. T. Huddleston and the Plaintiff in Error having waived his appearance by his attorneys, Stanford and Cochran and no amendments having been suggested by the Defendant in Error but to settle and sign the same as a true and correct Case Made and direct that it be attested and filed by the Clerk of said Court.

Witness my hand at Okemah, in Okfuskee County, Oklahoma, this the 7th day of October, 1909.

(Signed) JOHN B. PATTERSON,
District Judge pro Tempore.

Attest:

[SEAL.] C. E. GUTHRIE, *Clerk.*

138 In the District Court in and for Okfuskee County, Oklahoma.

No. 790.

CITIZENS BANK AND TRUST COMPANY OF OKEMAH, a Corporation, et al., Plaintiffs,

vs.

AMOS COBB et al., Defendants.

Journal Entry,

Final Judgment.

Be it remembered that on the 25th day of October, 1911, the above entitled cause came duly and regularly on for further and final hearing in the District Court in and for Okfuskee County, Oklahoma, before the Honorable John Caruthers, Judge of said Court, and the jury heretofore duly impaneled and sworn in this cause and duly instructed by the court and having said cause under consideration after having heard and duly considered all of the evidence of the respective parties, the instructions of the court and the argument of counsel for the respective parties, and now in charge of their sworn bailiff, the said jury returned in a body into open court, and the roll of said jury was called by the clerk and each of said jury answered present and said jury returned the following verdict to-wit:

"Citizens Bank & Trust Co. etc., Plaintiff vs. Amos Cobb et al., Defendants. Verdict-Civil. No. 790. In the district court in and

for Okfuskee County, we, the jury, duly impaneled, sworn and charged in the above entitled cause do upon our oaths find for the plaintiff against the defendants and find that the plaintiff is now and was at the time of the commencement of this action entitled to the immediate possession of the land described in plaintiff's petition, and fix the amount of its recovery as damages in favor of plaintiff and against defendants. No damage and no rent to January 1st, 1912. J. J. Finn, Foreman; J. J. Finn, Ozro Troboy, E. K. Williams, H. F. Ellison, T. E. Moore, J. A. Wagner, A. L. Hartley, W. I. Dodson, W. C. Duke, E. T. White, M. C. Shipp."

Whereupon the said jurors and each of them were asked by the clerk if same was their verdict and if they were still satisfied with same which said jurors and each of them answered affirma-
139 tively and said verdict was thereupon by the Court ordered to be filed and recorded by the clerk. To said verdict and the entry of judgment thereupon, defendants duly except:

It is therefore hereby ordered, considered and adjudged by the Court that the plaintiff, Citizen's Bank and Trust Company, of Okemah (a corporation) have and recover from the defendants, Amos Cobb, Tom Cobb, Mary Carr, Walter Stokes, Charlotte Douglass, Joe Gay, Ben Walker, W. H. McLeod or McLoud, Frank Johnson, M. B. Tolliver, Nathan Tolliver, Johnny Johnson, —— Thickem, —— Anderson, and C. B. Conner, the full and complete possession of the real estate and premises involved in this suit and lying and situate in Okfuskee County, State of Oklahoma, described as follows, to-wit: The South Half of the Southeast Quarter and the Northeast Quarter of the Southeast Quarter Section Twenty Two (22), Township Twelve (12) North and Range Eight (8) East of the Indian Base and Meridian and containing 120 acres, more or less, as the same may be, but that plaintiffs recover from defendants no damages and no rents for said property to January 1, 1912; and that writ of restitution issue on or after January 1, 1912, if necessary, to place said plaintiff, Citizens Bank and Trust Company of Okemah, in full and complete possession of all of said real estate and premises.

It is further ordered and adjudged by the Court that the plaintiff, Citizens Bank and Trust Company of Okemah, have and recover from the defendants Mary Carr and Tom Cobb all the costs of this action, for which let execution issue.

To all of the foregoing judgment, the defendants except.

Signed in open court on this the 25th day of October, 1911.

—— ——, *Judge.*

140 [Endorsement:] Wm. H. Dill vs. L. S. Skelton et al. Case Made. I hereby certify that this Case-Made was filed in my office this 23rd day of July, A. D. 1909, at 3:25 o'clock P. M. C. E. Guthrie, Clerk of the District Court, Okfuskee County, Oklahoma. #1227. L. S. Skelton v. Wm. H. Dill. Filed Nov. 22, 1909. W. H. L. Campbell, Clerk.

141 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed that the plaintiff in error have an extension of time within which to make, serve and file his brief herein until the thirtieth day of January, 1910.

(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

142 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Motion for Extension of Time in which to File Brief.

Comes now the plaintiff in error, by his attorneys, Stanford & Cochran, and moves the Court that he be given an extension of time in which to file his brief in this cause until the thirtieth day of January, 1910, as per the stipulation of the defendant in error's attorney, filed herewith.

(Signed) STANFORD & COCHRAN,
Attorneys for Plaintiff in Error.

(Endorsement:) No. 1227. L. S. Skelton vs. Wm. H. Dill. Motion for Extension of Time. Filed Jan. 8, 1910. W. H. L. Campbell, Clerk.

143 Supreme Court, November Term, 1909, January 10th, 1910, Thirty-seventh Judicial Day.

#1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Ordered by the court that the motion for extension of time to file briefs in the above cause be, and the same is hereby sustained.

144 In the Supreme Court, State of Oklahoma.

No. 1227.

L. S. SKELTON et al., Plaintiff- in Error,
vs.
W. H. DILL, Defendant in Error.

Motion to Strike Case-made and Dismiss the Appeal.

Comes now the Defendant in Error, W. H. Dill, by his attorney C. T. Huddleston, and moves the court to strike the case made and dismiss the appeal in the above entitled cause for the following reasons:

First. The case made shows upon its face that it was tried before a judge pro tempore, J. B. Patterson and that time was given by the said J. B. Patterson to make and serve a case made and that the said case made was not served within the time first allowed by the judge pro tempore and the time for making and serving the same was not extended by the regular presiding District Judge for Okfuskee County, Oklahoma, John Caruthers, but the time for making and serving said case made was attempted to be extended by the special judge, J. B. Patterson which the said J. B. Patterson had no authority or right under the law to do.

Second. The appeal should be dismissed because nothing is presented in the record proper for this court to review.

Wherefore, the Defendant in Error, prays that the case made be stricken from the files, because it was signed and settled out of time and that the appeal be dismissed because there is nothing for this court to review except such as would have to be brought up by case made or bill of exceptions.

(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

(Endorsement:) Copy. No. 1227. In the Supreme Court. L. S. Skelton et al. Plaintiff- in Error, vs. W. H. Dill, Defendant in Error. Motion to Strike Case Made and dismiss the appeal. C. T. Huddleston, Att'y for Defendant in Error.

145 In the Supreme Court of the State of Oklahoma.

L. S. SKELTON and W. E. WHITMAN, Plaintiffs in Error,
vs.
W. H. DILL, Defendant in Error.

To the Honorable Supreme Court:

In behalf of the motion herewith filed to strike the case-made and dismiss the appeal in the above entitled cause, the defendant in error submits the following:

This case was tried before the Honorable J. B. Patterson, jud-e pro tempore, at the May term of the District Court for Okfuskee County, Oklahoma, and judgment therein rendered for the Defendant in Error, on the 19 day of May, 1909, and upon the application of the Plaintiffs in Error, they were given 60 days in which to make and serve a case-made for the Supreme Court of Oklahoma. (Case Made, Page —.)

Thereafter, and on the — day of ——, 1909, the Plaintiffs in Error applied to the Honorable J. B. Patterson, Judge Pro Tempore to extend the time to settle a Case Made in the said cause and which application was granted by the said J. B. Patterson, Judge Pro Tempore, (Case Made Page —.) and on the 7th day of October, 1909, said Case Made was signed, settled by the Honorable J. B. Patterson and after the espiration of the time diligently given at the time of the rendition of the judgment.

The Defendant in Error submits upon the authority of City of Shawnee vs. Farrell, 98 Pac. Page 942, that the Judge Pro Tempore J. B. Patterson had no authority to make an order extending the time for making and serving a Case Made or to extend the time in which to sign and settle the same and filed in the Supreme Court. We think the case just above cited is directly in point and a motion to strike the case made from the files *and* should be sustained, and as the record proper no where shows any errors or anything that could properly be reviewed by this court upon the record
146 proper, the appeal should be dismissed.

Respectfully submitted,

(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

147 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON et al., Plaintiff- in Error,
vs.
W. H. DILL, Defendant in Error.

Notice.

To the above named plaintiff- in error, L. S. Skelton and W. E. Whitman, and their attorneys of record, Stanford & Cochran:

You and each of you are hereby notified that I have filed a motion in the Supreme Court, State of Oklahoma, in the above entitled cause, asking that the case made be stricken from the files and your appeal be dismissed for the reason the said case made was not signed and settled within time allowed by the court, a copy of said motion is herewith attached.

(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

Service accepted.
(Signed) STANFORD & COCHRAN.

(Endorsement:) No. 1227. L. S. Skelton, Plaintiff in Error, vs. W. H. Dill, Defendant in Error. Notice. C. T. Huddleston, Attorney for Defendant in Error. Filed Feb. 14, 1910. W. H. L. Campbell Clerk.

148 Supreme Court, January Term, 1910, February 21st, 1910, Twenty-ninth Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Ordered by the court that motion in the above cause to dismiss appeal be, and the same is hereby denied.

149 Supreme Court, March Term, 1910, March 8th, 1910, First Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

And now on this day it is ordered by the court that the stipulation in the above cause that plaintiff in error have an extension of time

until January 30th, 1910, in which to file brief, be, and the same is hereby allowed.

150 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed by and between the counsel for Plaintiff in Error and Defendant in Error, that the Plaintiff in Error may have until the 1st day of November, 1910, in which to file his brief in the Supreme Court in the above entitled cause.

(Signed) STANFORD & COCHRAN,
Attorney for Plaintiff in Error.

(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

(Endorsement:) No. 1227. L. S. Skelton vs. W. H. Dill. Stipulation. Filed Sep. 22, 1910. W. H. L. Campbell, Clerk.

151 Supreme Court, September Term, 1910, September 27th, 1910. Ninth Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

And now on this day it is ordered by the court that the stipulation herein that plaintiff in error have to November 1, 1910, to file brief, be, and the same is hereby allowed.

152 In the Supreme Court of the State of Oklahoma.

No. 1227.

W. H. DILL, Defendant in Error,
vs.
L. S. SKELTON, Plaintiff in Error.

Motion to Dismiss.

Comes now the Defendant in Error, W. H. Dill and moves that the above entitled cause be dismissed for the following reason, to-wit,

1. Because no brief has been filed by plaintiff in error as required by the rules of this Court.

(Signed) W. H. DILL,
By MARTIN L. FRERICHS,
Counsel for Defendant in Error.

(Endorsement:) #1227. In the Supreme Court of the State of Oklahoma. W. H. Dill, Defendant in error, vs. L. S. Skelton, Plaintiff in error. Motion to Dismiss. Filed Feb. 18, 1911. W. H. L. Campbell, Clerk. Martin L. Frerichs, Attorney for Defendant in error.

153 In the Supreme Court of the State of Oklahoma.

L. S. SKELTON, Plaintiff in Error,
v.
W. H. DILL, Defendant in Error.

Stipulation.

It is hereby stipulated by and between Plaintiff in error and Defendant in error that the Plaintiff in error shall have until the 1st day of May, 1911, in which to file brief in the above entitled cause this stipulation being in conformity to a former oral agreement between the parties.

(Signed) STANFORD & COCHRAN,
Attorneys for Plaintiff in Error.
(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

(Endorsement:) No. 1227. L. S. Skelton, Plaintiff in error, vs. W. H. Dill, Defendant in error. Stipulation for filing brief. Filed Mar. 4 1911. W. H. L. Campbell, Clerk.

154 In the Supreme Court of the State of Oklahoma.

L. S. SKELTON, Plaintiff in Error.
v.
W. H. DILL, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed that the motion heretofore filed in this cause to dismiss for the default of Plaintiff in error in not filing brief within the time provided by the rules of this Court, may be overruled, and Plaintiff in error given until May 1, 1911, in which to file his brief.

(Signed) STANFORD & COCHRAN,
Attorney- for Plaintiff in Error.
(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

(Endorsement:) No. 1227. L. S. Skelton Plaintiff in error, v. W. H. Dill, Defendant in error. Stipulation. Filed Mar. 4 1911. W. H. L. Campbell, Clerk.

155 Supreme Court, March Term, 1911, March 21st, 1911, First Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
W. H. DILL, Defendant in Error.

And now on this day it is ordered by the court that the stipulation herein that plaintiff in error have until May 1st 1911 to file briefs, be, and the same is hereby allowed.

156 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Motion for Restraining Order.

To the Honorable Judges of the Supreme Court:

Now comes the Plaintiff in Error by his Attorneys, Stanford & Cochran, and gives the Court to know and be informed that the Defendant in Error by himself and by his agents and employees has threatened and is now threatening to forcibly dispossess your Plaintiff in Error from the lands and premises in controversy in this action. As more fully appears from the Plaintiff in Error's affidavit hereto attached and marked Exhibit "A" and made part of this petition.

Wherefore Plaintiff in error prays that the said Defendant in error, his agents and employees be enjoined and restrained from dispossessing your Plaintiff in Error of the lands and premises in controversy or in any way interfering with his possession or enjoyment thereof pending the final determination of this action.

(Signed) STANFORD & COCHRAN,
Attorneys for Plaintiff in Error.

157 EXHIBIT A.

In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

L. S. Skelton, of lawful age, being duly sworn upon his oath states that he is and has been for a number of years last past in the possession of the north east quarter of section 18, township 13 north and range 10 east, in the county of Okfuskee and state of Oklahoma; that on the 31st day of February 1908, Wm. H. Dill caused to be filed in the district court within and for the Ninth Judicial district of the state of Oklahoma, sitting at Okemah in Okfuskee county, a petition, upon the filing of which a summons was issued and served upon the defendant and which said petition recited the fact that the defendant, L. S. Skelton, was in possession of the above described tract of land and said petition closing with a prayer for the possession of said premises.

Affiant further states that an answer was duly filed to said petition and the issue*d* were joined thereon and that on the 19th day of May 1909 the court in said cause rendered a judgment against the defendant and in favor of the said Wm. H. Dill.

That thereafter the defendant in said case, your affiant here duly filed in said court a motion for a new trial and on the 26th day of May 1909 said motion for a new trial was by the Court overruled, to which ruling of the Court the defendant then and there excepted, and thereupon judgment was by the court entered in favor of the defendant and against the plaintiff in said case; on the 26th day of May 1909 the defendant in said case, L. S. Skelton, your affiant herein prayed an appeal to the Supreme Court of the State of Oklahoma, which prayer for an appeal was by the court allowed and the defendant was given time in which to make, serve and file a case-made and supersedeas bond for which the Court fixed the amount of $1,000.00.

158 Affiant further states that the supersedeas bond was duly made and filed in said case and that case-made in said case was duly served, and filed on the 23rd day of July 1909 and that thereafter, petition in error in said case was duly filed in the Supreme Court of the State of Oklahoma on the 22nd day of November 1909, and that said case is now pending in that court, being therein numbered and entitled #1227, L. S. Skelton, Plaintiff in Error vs. Wm. H. Dill, defendant in error.

Affiant further states that by reason of the proceedings taken as

hereinbefore set forth he is in actual and legal possession of the lands and premises hereinbefore described; that notwithstanding said proceedings in said cause, and *not*withstanding the giving of the supersedeas bond as hereinbefore set forth the plaintiff in said cause below; the Defendant in error in the cause now pending in the Supreme Court of the State of Oklahoma, Wm. H. Dill and others acting by, through and under him are threatening to take actual possession of the afore described lands and premises; the affiant says that those acting by, under and through the said Wm. H. Dill are Hiram Johnson, G. C. Pendergrast and Chas. Pendergrast and Samuel Wilson and that the said Wm. H. Dill and the aforesaid persons acting under him as aforesaid are going upon said premises and are attempting to cultivate the same and are threatening to interfer- with the affiant in his right of possession in and to said lands and premises; that he, your affiant, has notified each and every of said persons to desist in their efforts to secure possession of said premises and that notwithstanding said notices that they and each of them still persist in their efforts and threats to take actual possession of said tract of land and further the affiant sayeth not.

(Signed) L. S. SKELTON.

Subscribed and sworn to before me this 22nd day of March, 1911.

(Signed) T. A. JOHNSTON,

[SEAL.] *Notary Public.*

My commission expires July 12, 1913.

[Endorsement:] No. 1227. In the Supreme Court of the State of Oklahoma. L. S. Skelton, Plaintiff in error vs. William H. Dill, Defendant in error. (Motion.) Filed Mar. 23, 1911. W. H. L. Campbell, Clerk. Stanford & Cochran, Okmulgee, Oklahoma, Attorneys for Pltf. in error.

159 STATE OF OKLAHOMA:

In the Supreme Court.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Objections to Allowance of an Injunction and Motion to Dismiss Appeal.

Comes now the defendant in error, W. H. Dill, by his attorneys Charles B. Conner and Burford & Burford, and objects to the granting of an injunction or restraining order in this cause as prayed for by the plaintiff in error in his motion now on file in this cause, and for grounds of objections, the defendant in error says:

First. That the plaintiff in error is not entitled to any relief in this cause for the reason that the judgment from which plaintiff in error is attempting to appeal was rendered in the District Court of Okfuskee County before and by one John B. Patterson, Special Judge designated for said cause, the regular Judge of said District Court being disqualified to try, hear and determine said cause. That upon the rendition of said judgment the plaintiff in error was by the said Patterson, Special Judge, given time in which to make and serve a case made for the Supreme Court, and that said time so fixed was allowed to expire without having served said cause. That thereafter and after the time for making said case, as allowed by said Court, had expired, the said defendant in error procured the said John B. Patterson, pro tem., to make a further order extending the time within which to make and serve said case. That said order is *is* void for the reason that the said Special Judge had no jurisdiction to make said order, and for the further reason that the
160 District Court of Okfuskee County had lost jurisdiction to extend the time for serving said case, the original time granted having previously thereto expired. That the case now pending in said court is based upon said void order, and this Court should not entertain the same. And defendant in error now here moves the Court to dismiss said appeal of plaintiff in error and remand said cause to the District Court of Okfuskee County.

Second. That said motion for a restraining order or injunction should not be allowed for the further reason that the judgment for possession of said land was in favor of the defendant in error in this case, William H. Dill, and that immediately after the rendition of said judgment the said plaintiff in error abandoned said land and removed all his improvements therefrom, including a substantial dwelling house. That immediately following said abandonment, the defendant in error William H. Dill took peaceable and complete possession of said real estate and has since said time without interruption or interference or objection on the part of said Skelton, broke up and put into cultivation more than one hundred acres of said land, and has caused to be cut down and hauled off the trees, brush, undergrowth, and cleared up said land, and has dug ditches and improved the land at a great expense, thereby increasing the value thereof in the sum of at least $3,000.00. That the said Skelton is not now and has not been in the possession of said land since the rendition of said judgment in the District Court, and if said injunction or restraining order is granted, it will result in making use of the process of this Court to put the said plaintiff in error in possession of — land and of depriving the defendant in error of the possession thereof, in violation of the judgment of the District Court of Okfuskee County, as rendered in this cause. That the other persons named in said motion are employees and tenants of the said Dill, who are and have been doing the actual work of cultivating and improving said land, and are planting and cultivating the crops thereon, and that none of said parties have been requested or notified
161 to vacate said premises or to desist from improving and cultivating the land.

Wherefore, Defendant in Error asks that the prayer of said motion be denied, and that he recover his costs herein, and that upon further investigation the Court dismiss said cause, for the reasons herein set forth. That in support of the objections herein set out, the defendant in error calls attention to the record in said cause, and also files herewith and asks to have the same considered, the affidavits of W. H. Dill, defendant in error, and of S. M. Wilson.

Respectfully submitted,

W. H. DILL,
Def't in Error.
BURFORD & BURFORD,
Att'ys Attorneys *for Defendant in Error.*

[Endorsed:] 1227. Skelton v. Dill. Objections to Injunction & Mo. to dismiss. Copy. Filed May 8, 1911. W. H. L. Campbell, Clerk.

162 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

Wm. H. Dill, of lawful age being first duly sworn says that prior to the filing of this action, Wm. H. Dill was the owner of the lands involved in this case, to-wit:

The North East Quarter of Section Eighteen (18) Township Thirteen (13) North, of Range Ten (10) East of the I. B. & M., situated in Okfuskee County; that L. S. Skelton, the plaintiff in error, wrongfully took possession of the said land and held the same from the defendant in error.

That on the — day of February, 1908, a suit was filed in the District Court of Okfuskee County against the said L. S. Skelton for possession of the said lands, which said action was tried during the month of May, 1909, and in which said action a judgment was rendered in favor of Wm. H. Dill and against the defendant, L. S. Skelton, plaintiff in error herein.

That the said action was tried before John B. Patterson, Judge pro tem., the presiding Judge of the said District Court being disqualified.

That after the judgment was rendered, the said L. S. Skelton filed a motion for a new trial, which said motion was overruled and Skelton, excepting to the same, appealed to the Supreme Court of Oklahoma.

Upon the request of L. S. Skelton, the Court granted time in which to make and serve a Case-made, but the said Skelton failed to make and serve a Case-made within the time so fixed and allowed; and after the time had expired and the Court had no jurisdiction of the

matter, the said John B Patterson, as the trial Judge, attempted to extend the time within which to make and serve a Case-made; that at the time, the said John B. Patterson had no jurisdiction of the said matter, and the time in which to serve the Case-made, had
163 expired, and any action which was taken by the said John B. Patterson would be without jurisdiction and of no effect.

That thereafter and after the time had expired within which to make and serve a Case-made, the said L. S. Skelton took the said case to the Supreme Court, and it is there now pending.

That after the trial of the said cause and after the time to make and serve Case-made had expired and after the said Trial Court had lost jurisdiction to extend the time to make and serve a Case-made, the said L. S. Skelton removed voluntarily from the said lands and took therefrom what ever improvements he had made or placed upon the said lands, including one 1½ story frame house, out buildings and fences, and took the same from the said property and at no time since that time has the said L. S. Skelton been in possession of the said lands or made any attempt or effort to obtain possession of the same.

That immediately thereafter this defendant in error, Wm. H. Dill, went into possession of the said lands, broke up and put into cultivation more than 100 acres of the said lands, cut down and hauled off trees, brush, under-growth, and dug ditches, and in every way possible improving the said lands, increasing the value of the same by at least the sum of $3,000.

That the said L. S. Skelton is not now and has not been since the rendition of this judgment in possession of the said lands in any manner or particular.

That Wm. H. Dill, Hiram Johnson, G. C. Pendergrast, Chas. Pendergrast, and S. M. Wilson have been cultivating the said lands but have made no threats or attempts to interfer- with L. S. Skelton and have not so interfered with the said Skelton, and the said Skelton has not been upon or about the said premises during the time herein mentioned, and said affiant and the other parties named herein have received no notice from Skelton to "desist in their efforts to secure possession of the said premises" but the said parties have been and are now in the actual and peaceable possession
164 of the said premises and are doing nothing in any way to interrupt the said L. S. Skelton.

(Signed) WM. H. DILL.

Subscribed and sworn to before me this 5 day of May, 1911.

(Signed) CHAS. B. CONNER,

[SEAL.] *Notary Public.*

My commission expires May 18, 1913.

165 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

S. M. Wilson, of lawful age being first duly sworn says that prior to the filing of this action, Wm. H. Dill was the owner of the lands involved in this case, to-wit:

The North East Quarter of Section Eighteen (18) Township Thirteen (13) North, of Range Ten (10) East of the I. B. & M., situated in Okfuskee County; that L. S. Skelton, the plaintiff in error, wrongfully took possession of the said land and held the same from the defendant in error.

That on the — day of February, 1908, a suit was filed in the District Court of Okfuskee County against the said L. S. Skelton for possession of the said lands, which said action was tried during the month of May, 1909, and in which said action a judgment was rendered in favor of Wm. H. Dill and against the defendant, L. S. Skelton, plaintiff in error herein.

That the said action was tried before John B. Patterson, Judge pro tem, the presiding Judge of the said District Court being disqualified.

That after the judgment was rendered, the said L. S. Skelton filed a motion for a new trial, which said motion was overruled and Skelton, excepting to the same, appealed to the Supreme Court of Oklahoma.

Upon the request of L. S. Skelton, the Court granted time in which to make and serve a Case-made, but the said Skelton failed to make and serve a Case-made within the time so fixed and allowed; and after the time had expired and the Court had no jurisdiction of the matter, the said John B. Patterson, as the trial Judge, attempted to extend the time within which to make and serve a Case-made; that

166 at the time, the said John B. Patterson had no jurisdiction of the said matter, and the time in which to serve the case-made had expired, and any action which was taken by the said John B. Patterson would be without jurisdiction and of no effect.

That thereafter and after the time had expired within which to make and serve a Case-made, the said L. S. Skelton took the said case to the Supreme Court, and it is there now pending.

That after the trial of the said cause and after the time to make and serve Case-made had expired and after the said Trial Court had lost jurisdiction to extend the time to make and serve a Case-made, the said L. S. Skelton removed voluntarily from the said lands and took therefrom what ever improvements he had made or placed upon the said lands, including one 1½ story frame house, out buildings and fences, and took the same from the said property and at no time since that time has the said L. S. Skelton been in possession of the

said lands or made any attempt or effort to obtain possession of the same.

That immediately thereafter this defendant in error, Wm. H. Dill, went into possession of the said lands, broke up and put into cultivation more than 100 acres of the said lands, cut down and hauled off trees, brush, under-growth, and dug ditches, and in every way possible improving the said lands, increasing the values of the same by at least the sum of $5,000.

That the said L. S. Skelton is not now and has not been since the rendition of this judgment in possession of the said lands in any manner or particular.

That Wm. H. Dill, Hiram Johnson, G. C. Pendergrast, Chas. Pendergrast, and S. M. Wilson have been cultivating the said lands but have made no threats or attempts to interfere with L. S. Skelton, and have not so interferred with the said Skelton, and the said Skelton has not been upon or about the said premises during the time herein mentioned, and said affiant and the other parties named
167 herein have received no notice from Skelton to "desist in their efforts to secure possession of the said premises" but the said parties have been and are now in the actual and peaceable possession of the said premises, and are doing nothing in any way to interrupt the said L. S. Skelton.

(Signed) S. M. WILSON.

Subscribed and sworn to before me this 5 day of May, 1911.

(Signed) CHAS. B. CONNER.
Notary Public.

My commission exps. May 18/13.

(Endorsement:) No. 1227. In the Supreme Court of the State of Oklahoma. L. S. Skelton, Plaintiff in error, vs. W. H. Dill, Defendant in error. Objections to allowance of an injunction and motion to dismiss appeal. Charles B. Conner and Burford & Burford Attorney- for Defendant in error. Filed May 8- 1911. W. H. L. Campbell, Clerk.

168 Supreme Court, May Term, 1911. May 9th, 1911, First Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

And now on this day the above cause comes on for hearing by the court upon the motion filed herein for a restraining order and the court having duly considered the same finds that said motion for restraining order in the above entitled cause should be overruled for want of proof of service thereof, and it is so ordered.

169 In the Supreme Court of the State of Oklahoma.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM H. DILL, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed by and between the attorneys for the plaintiff and *and* defendant in error in the above entitled cause that the brief of the plaintiff in error may be filed on or before the 10th day of September, 1911, and C. T. Huddleston as attorney for the defendant in error William H. Dill accepts service of a copy of the said brief on this date.

Aug. 28, 1911.

(Signed) STANFORD & COCHRAN,
Attorneys for Plaintiff in Error.

(Signed) C. T. HUDDLESTON,
Attorney for Defendant in Error.

(Endorsement:) No. 1227. L. S. Skelton, Pltf. in Error vs. Wm. H. Dill, Dft. in Error. Stipulation for filing brief. Filed Aug. 30, 1911. W. H. L. Campbell, Clerk. Stanford & Cochran. C. T. Huddleston, Att'ys.

170 Supreme Court, September Term, 1911, September 12th, 1911, First Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

And now on this day it is ordered by the court that the stipulation herein that plaintiff in error may file brief on or before September 10, 1911, be and the same is hereby allowed.

171 Supreme Court, September Term, 1911, September 15th, 1911, Fourth Judicial Day.

#1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

And now on this day the above cause is submitted on the record and briefs filed herein.

172 In the Supreme Court, State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM M. DILL, Defendant in Error.

Motion.

Comes now the plaintiff in error by his attorneys Stanford & Cochran, and moves the court here for the entry of an order granting permission to plaintiff in error, to file in this Court within Ten (10) days from this date five typewritten copies of brief in reply to brief of defendant in error, heretofore filed in this cause.

(Signed) STANFORD & COCHRAN,
Attorneys for Plaintiff in Error.

173 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM M. DILL, Defendant in Error.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

H. E. P. Stanford being duly sworn upon his oath states that on the 30th day of September, 1911, we caused to be deposited in the United States Mail at Muskogee, Oklahoma a copy of the attached motion in the above entitled cases. The envelope enclosing said motion being addressed to C. T. Huddleston at Okemah, Oklahoma, the attorney of record for the defendant in error, the postage on said envelope being fully prepaid.

(Signed) H. E. P. STANFORD.

Subscribed and sworn to before me this 30th day of September, 1911.

(Signed) HARRY C. DE VINNA,
[SEAL.] *Notary Public.*

My commission expires 12th day of June, 1915.

(Endorsement:) No. 1227. Skelton v. Dill. Motion Filed Oct. 2, 1911. W. H. L. Campbell, Clerk.

174 Supreme Court, November Term, 1911, November 18th, 1911, Fifth Judicial Day.

#1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WM. H. DILL, Defendant in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the lower court in the above cause should be in all things affirmed.

It is therefore ordered and adjudged by the Court that the judgment of the lower court in the above cause be, and the same is hereby in all things affirmed. Opinion by Rosser, C.

By the COURT: It is so ordered, the above opinion is hereby adopted in whole, and judgment is entered accordingly.

175 (Filed November 18, 1911.)

In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
v.
WM. H. DILL, Defendant in Error.

Error from District Court, Okfuskee County.

John B. Patterson, Special Judge.

Syllabus.

1. Where the Creek rolls show that a woman, and her deceased child are of Creek blood, and she and her husband testify to the same effect, a finding of the trial court that they are of Creek blood will not be disturbed, though a number of persons, including some relatives, testify they were adopted Creeks and not of Creek blood.
2. A certificate of acknowledgment, taken in another state, which stated that the maker of the instrument came before a Notary Public, and which was attested by the person making the certificate as Chancery Clerk and Ex-officio Notary Public, was sufficient to admit the instrument to record under the law in force in the Indian Territory prior to Statehood.

Action by Wm. H. Dill against L. S. Skelton.
Judgment for Plaintiff, and defendant brings error.
Affirmed.

Stanford & Cochran, for Plaintiff in Error.
Martin L. Ferrich, for Defendant in Error.

176 *Opinion by Rosser, C.*

This is a suit by Wm. H. Dill, defendant in error, hereinafter called plaintiff, against L. S. Skelton, plaintiff in error, hereinafter called defendant, and W. E. Whitman, to recover certain lands described in plaintiff's petition. The lands were the allotment of Archie Hamby, deceased, who was the son of Archie H. Hamby, a non-citizen, and Dora Hamby, a member of the Creek Tribe of Indians. Archie Hamby died on the 26th of July, A. D. 1901, leaving surviving him his father, mother, three brothers and a sister. The record is silent as to when this land was selected as his allotment, but the enrollment card shows that his enrollment was approved July 31, 1905. The deeds from the Creek Tribe to both his homestead and surplus allotments are dated May 24, 1907.

Plaintiff claims title as follows: On the 20th of July, A. D. 1906, Dora Hamby, joined by her husband, A. H. Hamby, executed a warranty deed to the lands to S. M. Wilson. On the 28th of July, A. D. 1906, S. M. Wilson and wife conveyed by warranty deed an undivided half interest in the lands to the plaintiff. On the 31st of December, A. D. 1906, Samuel M. Wilson and wife conveyed their remaining interest in the lands to Ada Smith by warranty deed. On the 18th of February, A. D. 1907, Ada Smith conveyed her interest in the lands to the plaintiff, Wm. H. Dill by warranty deed. The defendant, W. E. Whitman, filed a disclaimer as to any interest or title to the lands, and alleged that he was holding merely as tenant of the defendant, L. S. Skelton.

The defendant, L. S. Skelton, claims title to the lands as follows: On the 2nd day of September, A. D. 1905, A. H. Hamby, the father of the allottee, Archie Hamby, deceased, executed a power of attorney to H. E. P. Stanford, the first paragraph of which is as follows:

177 "To make, execute and deliver warranty deeds, mortgages, and releases upon my interest in the allotment of my deceased child, Archie Hamby, set aside as his approximate share of the lands of the Creek Nation of Indians in the Indian Territory."

On the same day Dora Hamby, the mother of the deceased allottee, executed and delivered to H. E. P. Stanford, a power of attorney, the third paragraph of which is as follows:

"To make, execute and deliver warranty deeds, mortgages, and releases upon my interest in the allotment of my deceased, — Archie Hamby, set aside as his approximate share of the lands of the Creek Nation of Indians in the Indian Territory."

On the 13th of September, A. D. 1905, H. E. P. Stanford, acting under the pow-rs as above set out, in the name of A. H. Hamby, and Dora Hamby, executed a warranty deed to the lands to L. S. Skelton, describing A. H. Hamby as a non-citizen of the Creek Nation of Indians, and Dora Hamby as an adopted citizen of the Creek Nation of Indians, and the two as sole heirs at law of Archie Hamby, deceased. On the 1st of July, A. D. 1907, H. E. P. Stanford, as attorney in fact for A. H. Hamby and Dora Hamby, exe-

cuted a warranty deed to the same lands to the defendant L. S. Skelton, upon the same consideration mentioned in the first deed. On the 12th of August, A. D. 1907, H. E. P. Stanford, acting under the power given him by A. H. Hamby, executed another general warranty deed in the name of A. H. Hamby, for the same consideration, to the defendant, L. S. Skelton.

A. H. Hamby and Dora Hamby testified that Dora Hamby was of thirty-second Creek blood, and that the deceased son was one sixty-fourth Creek. The enrollment card, which was introduced in evidence, also showed that Dora Hamby was one thirty-second Creek and that the deceased, Archie Hamby, was one sixty-fourth.

The defendant offered in evidence the testimony of several witnesses taken before the Commission to the Five Civilized Tribes, upon the hearing of the application of Mary E. Bowden et al., for enrollment as citizens by blood of the Creek Tribe, including that of several relatives, for the purpose of showing that Mary E.
178 Bowen, who was Dora Hamby's grandmother, was never a member of the Creek Tribe, and that Mrs. Bowen's father's family were citizens by adoption and not by blood. He also offered in evidence the testimony of Mary E. Bowen, who testified that her father was a quadroon Indian, but admitted that she had never drawn any money as a member of the Tribe. In the course of her examination the Commission seems to have examined various records, and to have found that her name was not on any authenticated tribal roll of the Creek Nation, and also to have found that on July 10, 1895, the Creek Citizenship Commission rendered a judgment rejecting her application for enrollment because she had no Creek blood, and because she was not living with her father, Jim Gentry, at the time he and his family were adopted into the Creek Tribe. All of this testimony was objected to by plaintiff at the time it was offered.

The parties waived a jury and submitted the issues to the Court to find the law and the facts. The court found the facts as to the conveyances as stated *b*above, and also found that the deceased, Archie Hamby, was one sixty-fourth Creek Indian, and that Dora Hamby was one thirty-second Creek. And upon these facts found that the plaintiff was entitled to recover.

Several questions are raised in the bri*fs* of counsel in the case, and to cover all points that are, or might be, raised in the case, would be to write a treatise upon the land laws in the Creek Nation, and also upon the rights of married women. A principal question raised in the brief of plaintiff in error is, as to the blood of Dora Hamby and Archie Hamby. It is contended by the plaintiff in error that Dora Hamby and Archie Hamby, though enrolled as one-thirty-second Creek Indian and one sixty-fourth Creek Indian, respectively, were, in fact, white people, and, therefore, at the time of the execution of the power of attorney by Dora Hamby to H. E.
P. Stanford that their lands were not restricted, and that she
179 had a right to convey them, and that, therefore, the deeds executed by H. E. P. Stanford, in the exercise of the power, were valu*d* and conveyed title to the defendant, plaintiff in error.

The second contention of defendant is, that the allotment not having been selected, and the patents nor having been issued until after the Supplemental Treaty took effect, that the land descended as provided in chapter 49 of Mansfield's Digest of Arkansas, and the mother, Dora Hamby, not being a Creek by blood, was postponed to the father, A. H. Hamby, and that he took either an estate in fee simple, or if the land was a new acquisition in Archie Hamby, deceased, a life estate in the lands, and that the power given by him to Stanford was valid, and that the conveyance from him gave either a fee simple or a life estate to defendant, depending on whether the estate of the allottee was an inheritance or a new acquisition.

Another contention of the defendant is, that the deed from A. H. and Dora Hamby to S. M. Wilson was not properly acknowledged and was therefore not entitled to record, and was not admissible as evidence in the case.

In order to clearly understand these questions it is necessary to refer to some of the Creek Agreements and the Statutes bearing upon the right to dispose of Creek Indian lands.

Sec. 16 of Supplemental Creek Agreement, ratified by Act of Congress, approved June 30, 1902, (32 Stat. L. 500), is as follows:

"Lands allotted to citizens shall not, in any manner, whatever, or at any time, be encum-ed, taken or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this Supplemental Agreement, except with the approval of the Secretary of the Interior, * * *"

The Indian Appropriation Bill of April 21, 1904, (33 Stat. L. 189), among other things, provides as follows:

180 "And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians, who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said Tribes, except minors, and except as to homesteads, may with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe. * * *"

Sec. 22 of the Act of Congress of April 26, 1906, entitled "An Act to Provide for the Final Disposition of the Affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," is as follows:

"That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the Tribe to which he or she belongs, or belonged, may sell and convey the land inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in the sale of such lands by a guardian duly appointed by the proper United States Court for the Indian Territory."

Sec. 8 of the Supplemental Agreement approved July 30, 1902, and put in force by proclamation by the President August 8, 1902, (32 Stat. L. 500), is as follows:

"All children who have not heretofore been listed for enrollment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895, and entitled to enrollment as provided by the Act of Congress approved March 1, 1901, (31 Stat. L. 861), shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly."

The third paragraph of Sec. 7 of the Original Creek Agreement, ratified by Act of Congress of March 1, 1901, is as follows:

"The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after the ratification of this agreement, but if he have no such issue then he may dispose of his homestead by will, free from limitation herein imposed, and if this be not done, the land shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, free from such limitation."

181 In the case of De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, the latter part of the paragraph quoted is construed to mean and include all lands, and it is held in that case that all lands, whether homestead or not, of the Creek Allottees, where the descent was cast while the Treaty was in effect, shall descent to their heirs, according to the laws of descent and distribution of the Creek Nation.

Sec. 6 of the Supplemental Creek Agreement (32 Stat. L. 500) is as follows:

"The provisions of the Act of Congress approved March 1, 1901, (31 Stat. L. 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed, and the descent and distribution of land and money provided for by said Act shall be in accordance with chapter 49 of Mansfield's Digest of the State of Arkansas, now in force in the Indian Territory: Provided, That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit the lands of the Creek Nation: And, Provided, further, That if there be no person of Creek Citizenship to take the descent and distribution of said estate then the inheritance shall go to non-citizen heirs in the order named in chapter 49."

The first question for decision is, as to the blood of allottee, Archie Hamby, and his mother, Dora Hamby. If Dora Hamby was of Creek blood she would inherit the allotment of her child whether the Creek Laws of descent and distribution were in force at the time the descent was cast, or the descent was governed by Sec. 6 of the Supplemental Creek Agreement, which put in force chapter 49 of Mansfield's Digest of the Statutes of Arkansas. Under the provision of Section 6 of the Supplemental Agreement if of Creek blood she would be preferred to her husband, and if the case of Shultis v. McDougal, 162 Fed. 331, is to be followed she would have a fee simple title

to the lands, but if the estate is not a new acquisition, she would still have an estate for life, and her deed would convey such title as would enable her to maintain ejectment against a person having no title. (Hurst v. Sawyer, 2 Okla. 470). Therefore, it is not necessary to decide in this case whether the estate was a new acquisition in
182 Archie Hamby, or whether it was an inheritance. If Archie Hamby was of Creek blood his allotment was subject to the restrictions contained in Sec. 16 of the Supplemental Creek Agreement; if he was not of Creek blood, then it would be necessary to decide whether the restrictions were removed from the sale of his allotment by the provision of the Indian Appropriation Bill of April 21, 1904.

Dora Hamby and her husband both testified that she and her deceased son were members of the Creek Tribe of Indians by blood. They testified that she was one thirty-second Creek and that the deceased was one sixty-fourth Creek. The enrollment card showed them to have Creek Blood. If any of the testimony taken before the Commission to the Five Civilized Tribes should be considered, then the testimony of Mary E. Bowen, Dora Hamby's grandmother, shows she was of Creek blood. The defendant introduced a copy of the testimony of some witnesses taken before the Commission to the Five Civilized Tribes for the purpose of showing that Mary E. Bowen, the grandmother of Dora Hamby, was not a Creek by blood. A great deal of the testimony offered for this purpose was inadmissible at the time it was given before the Commission, even under the liberal rule with reference to pedigree and family relationship. But certainly none of the testimony taken before the Commission in the application for enrollment of Mary E. Bowen, et al., was admissible in this case. No attempt whatever was made to account for the absence from this trial of the witnesses who had testified before the Commission. The plaintiff objected to its introduction and when the Court admitted it, over his objection, excepted. Whether the court proceeded upon the theory that many courts do where there is no jury, that it saves time to admit everything and then reject the incompetent testimony when considering the case, or whether he considered the evidence, does not appear from the record. But considering all the evidence, incompetent as well as compe-
183 tent, it cannot be said that there is not sufficient evidence to sustain the finding of the court.

It follows from the finding that Archie Hamby and Dora Hamby were of Creek blood, that the lands were subject to the restrictions contained in Sec. 16 of the Supplemental Agreement at the time of the execution of the power of attorney by Dora Hamby, and that the deed executed by Stanford under the power conveyed nothing to the defendant. The plaintiff's deed having been executed by Dora Hamby, the adult heir of the deceased allottee, after Sec. 22 of the Act of April 26, 1906, had become the law, conveyed her title to the plaintiff, and whether she owned a fee simple or a life estate only, when her interest vested in plaintiff, he had such title as would maintain ejectment. With this view of the case it is not necessary to pass on any of the other questions involved, except as to the sufficiency

of the acknowledgment of the deed from A. H. Hamby and Dora Hamby to S. M. Wilson.

The defendant objected to the introduction of the deed from A. H. Hamby and Dora Hamby to S. M. Wilson, giving as a reason that the acknowledgment recited that it was taken before a Notary Public, when in fact it was taken before a Chancery Clerk. The certificate of the officer taking the acknowledgment recites that "on this day came before me, the undersigned, a Notary Public, within and for the State of Mississippi," etc., and concludes as follows: "Witness my hand and seal as such Chancery Clerk and Ex-officio Notary Public," etc. It is subscribed "A. L. Endy, Chancery Clerk and Ex-officio Notary Public." This acknowledgment was sufficient. (Gore v. Wadsworth, 91 Ala. 416; Owen v. Baker, 101 Mo. 407; Buntyn v. Shippers Compress Co. 63 Miss. 94). The acknowledgment would have been good if taken either by the Chancery Clerk or by a Notary Public. (Mansfield Digest, Stats. of Ark. Sec. 651). It is urged in the brief of defendant that the officer attached no seal to
184 the certificate, but that was not stated as a ground of objection and cannot now be considered. Plaintiff in his reply brief claims there was a seal attached.

It follows that the judgment of the lower court should be in all things affirmed.

Nov. 18, 1911.

By the COURT: Adopted in whole.

185 Supreme Court, March Term, 1912, April 16th, 1912, Eleventh Judicial Day.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
v.
W. H. DILL, Defendant in Error.

It is ordered by the court that the mandate heretofore issued in this cause be, and the same is hereby re-called.

186 In the Supreme Court of the State of Oklahoma.

No. 1227.

L. S. SKELTON, Plaintiff in Error,
vs.
WILLIAM H. DILL, Defendant in Error.

Certificate.

I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 185 pages, num-

bered from one to 185, both inclusive, are a full, true and complete transcript of the record and all proceedings in the Supreme Court of the State of Oklahoma in the above entitled cause, as the same remains on file and of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, Oklahoma, this 10th day of May, 1912.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk of the Supreme Court of the State of Oklahoma,
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 23,357. Oklahoma Supreme Court. Term No. 346. L. S. Skelton, plaintiff in error, vs. William H. Dill. Filed September 17, 1912. File No. 23357.

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CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 56.

L. S. SKELTON, PLAINTIFF IN ERROR,

vs.

WILLIAM H. DILL.

BRIEF FOR PLAINTIFF IN ERROR.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 56.

L. S. SKELTON, PLAINTIFF IN ERROR,

vs.

WILLIAM H. DILL.

BRIEF FOR PLAINTIFF IN ERROR.

This case comes to the Supreme Court on a writ of error sued out by the plaintiff in error, L. S. Skelton, from the Supreme Court of the State of Oklahoma (Rec. 97), which affirmed a judgment of the District Court for Okfuskee County, Oklahoma, awarding the defendant in error the possession of certain land in controversy and $300 damages for wrongful detention of the premises (Rec. 75).

Statement of the Case.

The case at bar is a suit by defendant in error filed Feb. 3, 1908, against the plaintiff in error for the possession of one hundred and sixty acres of land located

in the Creek Nation of Indians in Oklahoma allotted to Archie Hamby, a minor Creek citizen, under the Original Creek Agreement of March 1, 1901, and the Supplemental Creek Agreement of June 30, 1902 (31 Stat., 861; 1 Kappler, 729, and 32 Stat., 500; 1 Kappler, 761), the land being described as follows: The Northeast quarter of Section eighteen, township thirteen north, range ten east. The defendant in error claimed the land by virtue of a warranty deed executed to A. M. Wilson by Dora Hamby and A. H. Hamby, her husband, who claimed to be the sole heirs of their deceased child, Archie Hamby, who died July 26, 1901, said deed being dated July 20, 1906 (Rec. 21), the land then passing by conveyances to the defendant in error (Rec. 25). Previously, to-wit, on September 2, 1905, Dora Hamby and her husband, A. H. Hamby, each executed a power of attorney to H. E. P. Stanford "to make, execute and deliver warranty deeds, mortgages and releases upon my interest in the allotment of my deceased child, Archie Hamby, set aside as his approximate share of the lands of the Creek Nation of Indians in the Indian Territory" (Rec. 28-30). On Sept. 13, 1905, Stanford, acting under said power of attorney, executed a warranty deed to the 160 acres of land embracing the allotment of Archie Hamby to the plaintiff in error for a consideration of $1,600 (Rec. 31), and the same was duly recorded among the records of Okfuskee County, Oklahoma, in which the lands were located, and the plaintiff in error entered into possession of the same. Subsequently, on July 1 and Aug. 12, 1907, Stanford, under the same power of attorney from the Hambys, executed another deed to Skelton for the same land.

It was contended by the defendant in error in the

court below that as Archie Hamby was of Indian blood, neither he in his lifetime nor his heirs during the period of five years from the approval and ratification of the Supplemental Creek Agreement by the Creek Nation, which was Aug. 8, 1902, could alienate the allotment without the approval of the Secretary of the Interior, relying as grounds for their contention on Section 16 of the Supplemental Creek Agreement, which reads as follows:

> "Sec. 16. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken or sold to secure or satisfy any debt or obligation, nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of the Supplemental Agreement except with the approval of the Secretary of the Interior." (32 Stat., 500; 1 Kappler, 764.)

And for their power and authority to make the deed to the defendant in error they relied on the provision in the act of Congress approved April 26, 1906 (34 Stat., 137; 3 Kappler, 169), reading as follows:

> "Sec. 22. That the adult heirs of any deceased Indian of either of the Five Civilized Tribes, whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in the sale of such lands by a guardian duly appointed by the proper United States Court for the Indian Territory."

The plaintiff in error contended that Dora Hamby and her husband, A. H. Hamby, and their child were not of Indian blood and came within the provisions of the Indian Appropriation Act approved April 21, 1904 (33 Stat., 189; 3 Kappler, 50), which provides as follows:

> "And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribe, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe."

He also contended that even if they were of Indian blood, under Section 8 of the supplemental agreement, approved June 30, 1902 (32 Stat., 500; 1 Kappler, 763), the minor Archie having died since May 25, 1901, the date named in the agreement when allottees must be alive in order to be entitled to enrollment, and before receiving his allotment, such allotment descended to his heirs unrestricted.

The trial court found that according to the rolls of citizenship of the Creek Nation and by the testimony submitted, Dora Hamby and Archie Hamby were mixed blood Indians; that both are enrolled upon the final rolls of the Creek Nation of Indians as such; that Dora is enrolled as 1-32 Indian and Archie as 1-64 (Rec. 72).

The Court further found that there was allotted and deeded to Archie Hamby as his share of the lands of the Creek tribe the Northeast quarter of Sec. 18, Township 13 North, range 10 East. That Archie died July 26,

1901, and that his mother, Dora Hamby, was still living; that on Sept. 2, 1905, A. H. Hamby and Dora Hamby executed a power of attorney to H. E. P. Stanford generally to make deeds and leases for them; that no consideration is mentioned in the body of the instrument, or acknowledged in the acknowledgment, and no particular land or other property mentioned; that on Sept. 13, 1905, July 1, 1907, and Aug. 12, 1907, H. E. P. Stanford, as attorney in fact of A. H. Hamby and Dora Hamby, executed and delivered to L. S. Skelton, for a consideration of $1,600, deeds to the lands above mentioned and now in controversy; that on July 20, 1906, Dora Hamby and A. H. Hamby, father and mother of Archie, executed and delivered to S. M. Wilson a warranty deed conveying to him the allotment of Archie Hamby; that this was subsequent to the act of Congress of April 26, 1906, removing the restrictions from mixed blood Creek Indians; that on July 28, 1906, Wilson and wife conveyed to Wm. H. Dill an undivided one-half interest; that on Dec. 31, 1906, Wilson and wife conveyed to Ada Smith the other half, and on Feb. 18, 1907, Ada Smith conveyed to Dill her interest in the land; that the plaintiff in error had been in possession of the land since August, 1906 (Rec. 75), and on this state of facts gave judgment for defendant in error. The Supreme Court of the State of Oklahoma affirmed the findings and judgment of the trial court (Rec. 98), from which action a writ of error was sued out to this Court. (Rec. 6.)

Assignment of Errors.

1. That the Supreme Court of the State of Oklahoma erred in not holding that the allotment of Archie Hamby upon his death descended to the father and mother, A. H.

Hamby and Dora Hamby, unrestricted, and was alienable on the 13th day of September, 1905; that the allotment was by good and sufficient conveyance transferred to the plaintiff in error, and that plaintiff in error was entitled to possession of the same.

2. That the Supreme Court of the State of Oklahoma erred in holding that the case was governed by Section 16 of the Supplemental Creek Agreement, approved June 30, 1902, prohibiting alienation of allotments for a period of five years from the date of the ratification of the Agreement, except with the approval of the Secretary of the Interior.

3. That the Supreme Court of the State of Oklahoma erred in not holding that after the death of Archie Hamby his allotment came within the provisions of Section 8 of the Act of Congress, approved June 30, 1902, and that it descended to his heirs without restrictions as to alienation.

Argument.

It was found by the lower courts that Archie Hamby was duly enrolled as a mixed blood member of the Creek Nation of Indians under Section 8 of the Supplemental Agreement; that his mother was a 1-32 Creek and his father a non-citizen; that he died in 1901; that his allotment was not confirmed in him until 1905, he having died between the time of his enrolment and the date when he actually received his allotment; that under Sec. 6 of the Supplemental Agreement providing for descent, having died without issue and unmarried, his mother was his sole heir in accordance with the proviso reading as follows: "Provided, That only citizens of the Creek Nation, male and female, and their Creek descendants, shall

inherit lands of the Creek Nation"; that on Sept. 2, 1905, Dora Hamby, as heir of Archie, executed a power of attorney to H. E. P. Stanford, empowering him to convey all her right, title and interest in the allotment which she had inherited from her deceased son; that acting under this power, Stanford, as her attorney in fact, on Sept. 13, 1905, conveyed the lands to the plaintiff in error, who has been in possession thereof ever since.

On this record the question to be determined by this Court is whether the allotment of Archie Hamby, so far as alienation by the heir is concerned, came under Sec. 16 of the Creek Supplemental Agreement of June 30, 1902, prohibiting the alienation or encumbering of allotments of Creek citizens for five years from August 8, 1902, the date when the supplemental agreement was ratified by the Creeks. Both the trial court and the Supreme Court of Oklahoma considered only Section 16 in connection with the case and failed properly to consider and give effect to the intention of Congress in passing said act, and particularly to Sec. 8 of that agreement, which provides for the enrolment of children born prior to May 25, 1901, and the descent of the allotments of those who were duly enrolled but who died before receiving their allotments, this being the situation in Archie's case. Archie was enrolled under this section, his enrolment having been approved by the Secretary July 31, 1905 (Rec. 39). He died July 26, 1901 (Rec. 20-72). Patents to his allotment, both homestead and surplus, were issued in his name May 24, 1907. (Rec. 14, 15.)

Counsel for plaintiff in error contend that under the Supplemental Creek Agreement two classes of allottees were provided for: 1. Persons whose names appeared upon the rolls and who were in being May 25, 1901, and

who were living when they received their allotments; and 2. Persons whose names appeared upon the rolls but who died before the actual allotments had been made to them.

As to living members, their allotments were provided for by Sec. 3 of the Original Agreement of March 1, ~~having been approved by the Secretary July 21, 1902~~, 1901, 31 Stat., 861, 1 Kappler, 729, as follows:

> "All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe * * * to each citizen 160 acres."
>
> Sec. 7. * * * Each citizen shall select from his allotment forty acres of land as a homestead, which shall be non-taxable, inalienable and free from any incumbrance whatever for 21 years, for which he shall have a separate deed.
>
> Sec. 28. * * * All citizens who were living on the 1st day of April, 1899, entitled to be enrolled under Sec. 21 of the Act of Congress, approved June 28, 1898, entitled "An Act for the Protection of the People of the Indian Territory, and for other purposes," shall be placed upon the rolls to be made by said Commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation and be allotted and distributed to them accordingly.
>
> All children born to citizens so entitled to enrolment up to and including the first day of July, 1900, and then living, shall be placed on the rolls made by said Commission; and if any such child die after said date, the lands and money to which

it would be entitled if living shall descend to its heirs according to the laws of descent and distribution of the Creek Nation and be allotted and distributed to them accordingly.

Sec. 6 of the Supplemental Creek Agreement of June 30, 1902, 32 Stat., 500, 1 Kappler 761, amends the original agreement so far as it relates to the laws under which descent and distribution shall take place by providing

> "that the descent and distribution of land and money provided for by said act shall be in accordance with Chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in the Indian Territory (instead of the Creek Nation): Provided that only citizens of the Creek Nation, male and female, and their Creek descendants, shall inherit lands of the Creek Nation: And provided further, That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to non-citizen heirs in the order named in said Chapter 49."

Chapter 49, Sec. 2522, Par. 2, of Mansfield's Digest, reads as follows:

> If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants, in equal parts. (Mansfield's Digest of the Statutes of Arkansas, 1884, 576.)

Sec. 16 of the Supplemental Agreement provides:

> "Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken

> or sold to secure or satisfy any debt or obligation, nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this Supplemental Agreement, except with the approval of the Secretary of the Interior.
>
> "Each citizen shall select from his allotment forty acres of land * * * as a homestead, which shall be and remain non-taxable, inalienable and free from any incumbrance whatever for 21 years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead in which this condition shall appear."

Judge Campbell, in United States vs. Shock, 187 Fed., 862, defined "Allotment" as follows:

> "The term allotment in the Indian legislation now under consideration pursuant to which the lands of the Five Civilized Tribes were divided among the individual members thereof, has a special signification and applies to the integral part of the land of a particular tribe which each individual member of such tribe receives as his share in the division of such land contemplated by Congress in the Act of 1893 providing for the Dawes Commission and carried out pursuant to that and subsequent legislation."

As to those allottees who died before and after receiving allotments the following apply:

Sec. 28 of the Original Agreement, cited above, contains similar provisions to those in Sections 7 and 8 of the Supplemental Agreement, following:

> "Sec. 7. All children born to those citizens who are entitled to enrolment as provided by the Act

of Congress, approved March 1, 1901, subsequently to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die before securing his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

"Sec. 8. All children who have not heretofore been listed for enrolment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895 and entitled to enrolment as provided by the Act of Congress, approved March 1, 1901, shall be placed on the rolls made by the Commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

"Sec. 16. * * * The homestead of each citizen shall remain after the death of the allottee for the use and support of children born to him after May 25, 1901, but if he have no such issue, then he may dispose of his homestead by will, free from limitation herein imposed; and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation according to the laws of descent herein otherwise prescribed."

It will be noted in the above that provision is made for the allotment, descent and alienation of the lands of allottees who were enrolled and living when allotment was

made, and then special clauses for those allottees who were enrolled but who died before receiving their lands; a clear distinction being made between the two classes.

Similar legislation to that applying to the Creeks was enacted by Congress, in the form of agreements with the tribes, with respect to the Choctaws, Chickasaws and Cherokees. Every member of the tribe, duly enrolled and living at a certain date, received his or her share of the tribal property which had theretofore been held in common ownership. Separate provision was made regarding the distribution of funds. Throughout this whole legislation the object seems to have been uppermost in the mind of Congress to provide a home for each citizen of the Indian Nations and secure the same to him. With this purpose in view and realizing the improvident disposition of the Indians, Congress provided that the lands so allotted to them shall not be sold or incumbered by the allottee with respect to the Choctaws and Chickasaws during the lifetime of the allottee, not exceeding 21 years, as to homesteads, and after one, three and five years from date of deed as to surplus lands, and in the case of the Creeks and Cherokees, 21 years from date of deed therefor as to homestead and five years from ratification of agreements as to surplus, except with the consent of the Secretary of the Interior. Having thus secured the lands to each living Indian, Congress provided what shall be done with lands allotted to Indians who had been enrolled but who died before actually receiving their allotments and as to whom the protective provisions of the act were not intended to apply. Sec. 8 of the Supplemental Agreement, in providing for additional enrolments of children, directed that

"if any such child has died since May 25, 1901,

> or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed accordingly."

Congress here expressly omitted any prohibition on alienation by the heirs, nor could it have intended Sec. 16 to apply, as the heirs, if enrolled, already had lands sufficient to make them self-supporting, and there could be no object or reason in compelling the heirs to retain the lands they inherited under the same restrictions which attached to their own allotments. Sec. 16, we contend, applied and was intended to apply only to allotted lands of living members—not to lands of deceased enrolled members such as is set out in Sec. 8. Sec. 16 has no bearing or reference whatever to Sec. 8, which is a separate and distinct section providing specially for enrolment of certain children and for the distribution of their lands in case they died before allotments actually had been made to them. Why the inhibition against the alienation contained in Sec. 16 does not apply to allotments as made in the case of Archie Hamby is clearly stated by this Court in Mullen vs. the United States, 224 U. S., 447, where this precise question was reviewed. This case arose under the Choctaw and Chickasaw agreement of 1902 (32 Stat., 641; 1 Kappler, 771), whose provisions concerning allotment and alienation are practically the same as those in the Creek Agreement, said agreements having been made by the tribes and enacted into law by Congress about the same time.

Mr. Justice Hughes, in rendering the opinion, held that there was merely a formal distinction and no difference in substance between the agreements with the Choc-

taws and Chickasaws and those with the Creeks, and that although the Indians concerned were full-bloods, there was no restriction upon the right of alienation as to inherited lands in the Five Tribes; and that, there being no restriction on alienation, the heirs were free to convey after the lands had been duly allotted and even in advance of patent.

After the opinion in Mullen vs. United States was rendered by this Court a case arose in the Federal Court of Oklahoma under the Creek agreements in all respects similar to the one now being considered, in which it was held that Sec. 7 of the Original Creek Agreement and Sec. 16 of the Supplemental Agreement under which allotments of land were made, providing that lands allotted to citizens shall not in any case be alienable before the expiration of five years from the ratification of the agreements respectively, did not apply to lands allotted to heirs of an enrolled citizen who died before receiving his allotment, and as to such lands the said agreement imposed no restrictions upon the right of alienation. This case is entitled Reed vs. Welty, decided by Judge Campbell of the U. S. District Court for the Eastern District of Oklahoma, June 26, 1912, and reported in 197 Federal, 419.

In that case, after quoting from the opinion of Mr. Justice Hughes in the Mullen case, Judge Campbell said:

> "In the original Creek Agreement, approved March 1, 1901, section 3 provided for the allotment of the lands among the citizens so as to give to each an equal share of the whole as nearly as may be, and then more specifically provided for the amount each member should receive. Sec. 7 of the same agreement provided that lands allotted to citizens should not at any time be encumbered

prior to the date of the deed therefor to the allottee and that such land should not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of the agreement without the approval of the Secretary of the Interior. It further provided that each citizen should select from his allotment a homestead which should be non-taxable, inalienable, etc., for 21 years, for which he should have a separate deed. Then follows intervening sections having no bearing on the question here up to section 28. By the latter section it was provided:

> 'All citizens who were living on the first day of April, 1899, entitled to be enrolled under sec. 21 of the act of Congress, approved June 28, 1898, entitled An Act for the Protection of the People of the Indian Territory and for Other Purposes, shall be placed upon the rolls to be made by said commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and funds to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.'

"By the Supplemental Creek Agreement it was provided:

> 'Sec. 16. Lands allotted to citizens shall not in any manner whatever, or at any time * * * be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select * * * a

homestead which shall be and remain non-taxable, inalienable and free from any incumbrance whatever for 21 years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead in which this condition shall appear.'

"By section 20 of the supplemental agreement it appears that it was intended to modify and supplement the original agreement and repeal any conflicting provision in that agreement or any prior agreement, treaty or law. So that if the land was allotted to these heirs before the taking effect of the supplemental agreement, then, so far as the inquiry here is concerned, their rights are fixed by the original agreement as amended by section 16 of the supplemental agreement above quoted. The bill, however, while not giving the date of the allotment, alleges that the land passed to the heirs under and by virtue of the original agreement. Does the provision of section 7 of the original agreement or of section 16 of the supplemental agreement, that the lands allotted to citizens shall not be alienable by the allottee, or his heirs, for the period of five years, apply to lands of the character involved in this case, or is that restriction to be confined in its application to lands allotted direct to living members and not to the lands allotted to heirs of deceased members?

"In the Choctaw and Chickasaw Agreement, after providing for allotments to living members, and for the selection of homesteads by them, inalienable for life, not exceeding 21 years, section 16 provided a term of restrictions upon the sale of lands other than homesteads allotted to members. Then section 22 provided that the lands of any member dying before receiving his allotment should be allotted in his name and should descend to his heirs according to the Arkansas law. Justice Hughes decides that in such case there is no

warrant of law for selecting a homestead out of such an allotment. He further decides that the Choctaw-Chickasaw Agreement contemplated two classes of allotments: 1. Allotments to members of the tribes and to freedmen living at the time of allotment; and 2. allotments made in the case of enrolled members entitled to allotment, but dying before actual allotment had been made, and that the restriction prescribed in section 16 applies to the former and not to the latter. In the Creek agreement the commission is dealing with another one of the Five Tribes, but with the same object in view; that of the allotment of the tribal lands to the individual members, and the agreement is so similar to the Choctaw-Chickasaw agreement in terms and arrangement that the two classifications of allotments found by Justice Hughes in the latter agreement may also be said to exist in the former, and, as in the Choctaw-Chickasaw agreement, the restrictions upon alienation must be held to have only applied to the first class; that is, allotments to members of the tribe living at the time of allotment. It follows that on July 26, 1904, London and Ramsey Knight had an alienable interest in the land in question."

After both the Supreme Court of the United States and the United States District Court for Oklahoma decided the points here in controversy, the matter also came up in the Supreme Court of the State of Oklahoma in Rentie vs. McCoy, decided Nov. 26, 1912, reported in 128 Pac., 244. In this case Scott Rentie, a minor, and a duly enrolled Creek Freedman, died July 2, 1889, without a surviving widow or children, his allotment not having then been selected. On Aug. 15, 1902, his distributive share of land as a member of the Creek tribe was allotted to his heirs. On April 8, 1905, Morris and Katie Rentie, who were the father and mother of Scott Rentie, and his

surviving heirs, executed in due form a warranty deed covering his allotment. The Court held that the land passed to Morris and Katie Rentie free from restrictions and that it was alienable on April 8, 1905, when they conveyed the same.

After quoting from the opinion of this Court in Mullen vs. U. S., the Court said:

> "The same conclusion had prior to that decision by the Supreme Court of the United States been reached by this Court in Hancock vs. Mutual Trust Co., 103 Pac., 566. (See also U. S. vs. Jacobs, 195 Fed., 707.) This land having been allotted to the heirs by virtue of section 28 *supra*, under Mullen vs. U. S., there being no distinction between section 22 of the Choctaw and Chickasaw Supplemental Agreement and section 28 of the Creek Agreement, it being held that section 16 was no part of the scheme for allotment to living members of the Choctaw and Chickasaw tribes, section 16 of said Creek Agreement is a part of the scheme of allotment for living members and not where they died prior to allotment. That being true the allotment having been made to the heirs under said section 28, whether mixed or full blood, they took it free from restrictions and the same was alienable. (See also Reed vs. Welty, 197 Fed., 419, which holds to the same effect.)"

The Supreme Court of Oklahoma rendered the opinion in the pending case on November 18, 1911, and the opinion in Rentie vs. McCoy was rendered on November 26, 1912, a year later; thus reversing itself on the strength of the opinion of this Court in Mullen vs. United States.

Thus, the highest courts of the United States and of the State in which the land is located are uniform in their

opinions, that under the Five Tribes legislation lands allotted to enrolled members who died before receiving their allotments descend to their heirs without restriction on the right of alienation.

This being the case, as Dora Hamby by a good and sufficient deed conveyed to the plaintiff in error all her right, title and interest in and to the allotment of her deceased son, Archie, which she had inherited as the sole heir of Archie, who was an enrolled member by blood of the Creek Nation but who died previous to actually receiving his allotment, we have no doubt this Court will find that the land was unrestricted and that Dora had a lawful right to convey the same to the plaintiff in error on September 13, 1905.

CHARLES J. KAPPLER,
CHARLES H. MERILLAT,
Attorneys for Plaintiff in Error.

APPENDIX.

Correction of the Record.

The manuscript of the record seems to have been prepared hastily by the Clerk of the Court in Oklahoma and in consequence a number of errors were committed and matter was inserted which has no bearing on the pending case.

The following corrections should be made:

On page 33 after the words, Mark L. Bozarth, the clerk failed to insert the indorsement of the recording of the deed to Skelton.

The deed and indorsement follow:—

Warranty Deed, A. H. Hamby and Dora Hamby, to L. S. Skelton.

Know all men by these presents: That we, A. H. Hamby (a non-citizen of the Creek Nation of Indians in Indian Territory), and Dora Hamby, his wife (an adopted citizen of the Creek Nation of Indians in Indian Territory), of Okmulgee, Indian Territory, being the sole heirs at law of Archie Hamby, deceased, also an adopted citizen of said Creek Nation of Indians who died intestate at the town of Bentley, Mississippi, on July 27, 1901, and to the heirs of whom has been allotted by the said Creek Nation the following described land for and in consideration of the sum of One Thou-

sand and Six Hundred Dollars, to us in hand paid by L. S. Skelton of Fredonia, Kansas, the receipt of which is hereby acknowledged do hereby give, grant, bargain, sell and convey unto the said L. S. Skelton and unto his heirs and assigns that certain piece, parcel or tract of land described as follows, to-wit:

The northeast quarter of section eighteen (18) in township thirteen (13) north and Range ten (10) east of the Indian Base and Meridian in Indian Territory containing 160 acres, more or less as the case may be according to the United States survey thereof, together with all the improvements thereon and the privileges and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the afore granted premises to the said L. S. Skelton and his heirs and assigns in fee simple forever and we, the said A. H. Hamby and Dora Hamby, for ourselves and our heirs, executors and administrators, do covenant to and with the said L. S. Skelton and his heirs and assigns that we are lawfully seized in fee of the afore granted premises, that they are free from all incumbrances, that we have good right to sell and convey the same to the said L. S. Skelton, and that we will and our heirs, executors and administrators shall warrant and defend the same to the said L. S. Skelton and his heirs and assigns forever against the lawful claims and demands of any and all persons.

And I, Dora Hamby, wife of the said A. H. Hamby, for the consideration aforesaid, do hereby release, relinquish and forever waive unto the said L. S. Skelton and unto his heirs and assigns all my right, claim or possibility of dower in or out of the afore granted premises.

In testimony whereof, we, the said A. H. Hamby and Dora Hamby, his wife, have hereunto set our hands and seals at Okmulgee, Ind. Ter., this 13th day of September A. D. 1905.

A. H. HAMBY [SEAL].
By H. E. P. Stanford, his attorney in fact.
DORA HAMBY [SEAL].
By H. E. P. Stanford, her attorney in fact.

Acknowledgment.

UNITED STATES OF AMERICA,

INDIAN TERRITORY,

WESTERN JUDICIAL DISTRICT, SS.

Be it remembered that on this day came before me the undersigned, a Notary Public, within and for the above named District and Territory, duly commissioned and acting as such, H. E. P. Stanford, to me personally well known as the identical person who signed the name of A. H. Hamby to the foregoing deed under and by virtue of the authority granted to him in a certain power of attorney duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory at Okmulgee, Indian Territory, and stated that he had so signed and executed said instrument as the act and deed of the said A. H. Hamby by virtue of the foregoing mentioned authority as his free and voluntary act and deed and as the free and voluntary act

and deed of the said A. H. Hamby for the purposes and considerations therein mentioned and set forth, and I do hereby so certify.

And I further certify that on the same day and in the absence of the said A. H. Hamby the said H. E. P. Stanford also stated that he had subscribed the name of the said Dora Hamby to the said deed and signed and sealed the relinquishment of her dower therein contained under and by virtue of the authority granted to him in a certain power of attorney duly recorded in the office of the Clerk of the United States Court for the Western District of the Indian Territory at Okmulgee, Indian Territory, as the free and voluntary act and deed of the said Dora Hamby, without compulsion or undue influence on the part of his said husband, A. H. Hamby, for the consideration and purposes therein contained and set forth.

In testimony whereof I have hereunto set my hand and notarial seal at Okmulgee, Indian Territory, this 13th day of September, A. D. 1905.

MARK L. BOZARTH,

[SEAL] *Notary Public.*

My commission expires Oct. 21, 1906.

Filed for record Sept. 14, 1905, 2 P. M. The original record of the above and foregoing transcript is at Okmulgee in book D 12, page 638. Transcribed to Book 16, at page 83, Transcribed Records, and filed March 25th, 1913, at 11:00 A. M. Okemah, Okfuskee County, Okla.

Indorsement.

STATE OF OKLAHOMA, } *ss.*
County of Okfuskee. }

I do hereby certify that this is a true copy of instrument filed for record in my office on the 25th day of March, 1913, at 11 o'clock and 00 minutes A. M., and is duly recorded in book Tr. 16, on page 83.

GEO. J. MOSIER,
Register of Deeds.
By LEE W. ROBERTSON,
Deputy.

On page 77, paragraph seven, strike out "1909" and insert "1905."

On page 79, strike out Journal Entry of case "Citizens Bank & Trust Co. of Okemah, a corporation, *et al*, plaintiffs vs. Amos Cobb *et al*, defendants, down to and including "140 Indorsement," on page 80.

CHARLES J. KAPPLER,
CHARLES H. MERILLAT,
Attys. for Plaintiff in Error.

SKELTON *v.* DILL.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 56. Submitted November 5, 1914.—Decided November 30, 1914.

Restrictions upon alienation of allotments to Creek Indians made under the act of March 1, 1901, c. 676, 31 Stat. 861, supplemented by the act of June 30, 1902, c. 1323, 32 Stat. 500, apply only to allotments made to living citizens in their own right and do not apply to those made on behalf of deceased members of the tribe. *Mullen* v. *United States*, 224 U. S. 448.

Quære, who are the true heirs under the above statutes of a Creek Indian child of mixed parentage who was born prior to May 28, 1901, and died before receiving his allotment.

30 Oklahoma, 278, reversed.

THE facts, which involve the construction of the Creek Indian allotment statutes and the effect of the provisions regarding restrictions on alienation of allotments and their applicability to allotments made to deceased members of the tribe, are stated in the opinion.

Mr. Charles J. Kappler and *Mr. Charles H. Merillat* for plaintiff in error.

There was no appearance or brief filed for defendant in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

Whether an allotment of lands in the Creek Nation which was made on behalf of Archie Hamby, a Creek child then deceased, passed the lands to his heirs free from restrictions upon alienation is the Federal question in this case. The facts out of which the question arises are these: Archie Hamby was born in February, 1900, and died in

July, 1901, being survived by his parents and by at least one sister. His mother was a Creek woman, duly enrolled as such in 1895, and his father was a white man not entitled to enrollment. Two or three years after the child's death his name was regularly placed upon the roll of Creek citizens by the Commission to the Five Civilized Tribes, and the lands in question were duly embraced in an allotment made on his behalf. A deed for them was also issued in his name, and this by operation of law vested the title in his heirs. In September, 1905, after the allotment was made, his parents, acting through an attorney in fact appointed a few days before, executed and delivered to L. S. Skelton a warranty deed for the lands, and in July, 1906, the parents, apparently ignoring the deed to Skelton, executed and delivered to S. M. Wilson a similar deed. Whatever rights Wilson acquired under his deed subsequently passed to William H. Dill.

The action in the court of first instance was in ejectment, and was brought by Dill against Skelton, who had gone into possession under his deed. Dill prevailed and the judgment was affirmed by the Supreme Court of the State, which held that when the deed to Skelton was made the lands were subject to restrictions upon alienation which rendered the deed void, and that at the time of the deed to Wilson, under which Dill was claiming, the restrictions had been removed, thereby rendering that deed valid. 30 Oklahoma, 278.

The allotment was made under the act of March 1, 1901, c. 676, 31 Stat. 861, as modified and supplemented by the act of June 30, 1902, c. 1323, 32 Stat. 500. These acts embodied and adopted a plan for allotting and distributing the lands and funds of the Creek Nation in severalty among its citizens, and to that end required that an enrollment be made by the Commission to the Five Civilized Tribes of all citizens who were entitled to participate in the allotment and distribution. It being necessary to fix a date

as of which the enrollment should be made, the original act provided, in § 28, that the enrollment should embrace all qualified citizens who were living on April 1, 1899, and all children born to such citizens up to and including July 1, 1900, and living on that date. The supplemental act changed the latter date by declaring, in §§ 7 and 8, that the enrollment should include all children born up to and including May 25, 1901. Evidently anticipating that participation in the allotment and distribution might in some instances be cut off by death, Congress made provision for such a contingency. Thus the original act declared, in § 28: "And if any such citizen has died since that time (April 1, 1899), or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs . . . and be allotted and distributed to them accordingly." And the supplemental act provided, in §§ 7 and 8: "And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly."

Both parties are claiming under deeds from the father and mother, so we pass the question of who were the true heirs of the deceased child, observing only that under § 6 of the supplemental act, in the circumstances before stated, the mother was and the father was not a lawful heir.

In immediate connection with the provisions respecting allotments to living citizens in their own right, the original act contained a provision (§ 7) imposing various restrictions upon the alienation of the allotted lands. But aside from its relation to other parts of the act that provision need not be noticed, for it was superseded by § 16 of the supplemental act, which reads as follows:

"Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear. Selections of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who cannot select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity."

Whether these restrictions were intended to apply only to allotments made to living citizens in their own right or to apply as well to allotments made on behalf of deceased members is the question for decision. The Supreme Court of the State when passing upon this case held

them applicable to both classes of allotments, but in the later case of *Rentie* v. *McCoy*, 35 Oklahoma, 77, reached the other conclusion, as did also the District Court for the Eastern District of Oklahoma in *Reed* v. *Welty*, 197 Fed. Rep. 419. We think the better reasoning lies with the view that the restrictions apply only to allotments made to living citizens in their own right. Not only do the provisions of § 16 of the supplemental act lend themselves to that view, but in those sections of both acts which deal with allotments on behalf of deceased persons there is no suggestion of a restriction upon alienation. This difference in legislative treatment doubtless was deliberate and reflects a corresponding difference in purpose. In *Mullen* v. *United States*, 224 U. S. 448, a like question arose under the original and supplemental acts relating to the Choctaw and Chickasaw lands, and we held that the restrictions upon alienation imposed by those acts were applicable to allotments to living members in their own right but not to allotments on behalf of members then deceased. We do not perceive anything in the acts relating to the Creek lands which calls for a different conclusion.

The judgment must therefore be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Judgment reversed.